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Judiciary Committee
February 27, 2015

[LB265 LB302 LB307 LB433 LB612]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 27, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB307, LB433, LB612, LB302, and LB265. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: Bob Krist.

SENATOR SEILER: Welcome to the Judiciary Committee. My name is Les Seiler. I'm from Hastings, Nebraska, and Chairman of this group. On my far right is Senator Matt Williams from Gothenburg; next is Adam Morfeld from Lincoln; next will be Bob Krist from Omaha; Senator Ernie Chambers is next to him. From the far left is Dr. Laura Ebke from Crete; next will be Senator Patty Pansing Brooks from Lincoln; next will be Senator Colby Coash from Lincoln; our clerk is clerk Oliver VanDervoort; our pages today are Jonathan and Drew. We will be discussing in order that is on the published agenda. And turn off your phones right now so that we don't get interrupted. I'll do the same. When you come up to speak, make sure you have your testifier blue page all filled out to hand to the clerk so we can keep track of who's testifying. Slide up to the table because the mike is not quite picking up people if you're back too far. And it's not to amplify. It's to make sure the transcribers can pick up on your entire testimony. Okay, Senator Kolowski, you may open on LB307.

SENATOR KOLOWSKI: Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent Legislative District 31 in southwest Omaha. I was approached by a constituent who also leads the Domestic Violence Council in Omaha. The council collaborated with county prosecutors on what were the biggest barriers to successfully holding offenders accountable for their violence against intimate partners in Nebraska. The need to prosecute crimes that fit the damage done to victims in domestic assault was of great importance. In their 2012-2013 annual report, the Nebraska Coalition to End Sexual and Domestic Violence reports over 28,000 people received direct services in Nebraska for help with domestic violence, sexual assault, or stalking; over 60,000 shelter beds were provided; and almost 50,000 crisis-line calls were also made. In 2014, Douglas County alone had almost 15,000 911 calls for assistance in a domestic abuse-related incident and over 1,700 charges related to domestic abuse. Of the 705 first offense domestic assault charges under the statute we're discussing today, 98 percent were for third degree. LB307 seeks to make four important changes. First, under current Nebraska law, assault in the first degree of a stranger is Class II felony, but if the assault is against an intimate partner, it's only a Class III felony. LB307 seeks to equalize these penalties. When you assault a person...when you assault the person you profess to love, it seems right to make sure you would at least get the same penalty as if you assaulted a stranger. Point two: LB307 also seeks to clarify enhancement of penalties in a more consistent manner for all domestic assault levels--first, second, and third.

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Experts in domestic abuse will tell you that it is to be expected that the first assault is commonly not the last one. And the goal in domestic abuse cases is not only to keep the victim safe but to allow the system to hold the offender accountable. Enhancing the penalties for the second offense and then again for the third or subsequent offenses ensures that our community takes seriously repeat offenders who create this kind of damage within their families. It's not just the assault against the victim; too often, children witness the assault. In Douglas County alone, over 1,000 children were present at the time of the incident report...at the time an incident report was written by the Omaha Police Department. Point three: LB307 also seeks to address a large gap between domestic assault in the first degree and the third degree. First degree requires serious bodily injury, which Nebraska law basically translates to documentation of a permanent injury. Second degree requires the use of a dangerous instrument. In cases where injuries are minimal--a scratch or one bruise--a third degree charge is appropriate. However, many victims suffer substantial injury by the perpetrator's bare hand such as broken bones or significant bleeding, bruising, and scarring, just short of permanent injury. When this happens under current law, the prosecutor is forced to only charge the low-level third degree domestic assault. You'll hear from a prosecutor and at least one victim the importance of addressing this gap by the substantial harm caused to victims and their families by bare fists. LB307 provides a definition for "substantial bodily injury." Point four: Domestic abuse victims are often stalked by their current or former partner, even long after the criminal sentence is carried out or after the final custody hearing is over. I saw firsthand the problems of students being stalked, harassed, and bullied in my experience in the school systems where I spent my career of 41 years. The last piece of this...that is addressed by LB307 is the stalking statute. Adding "communicating by electronic means" allows prosecutors to go after the technological aspect of stalking. LB307 inserts a venue description that has been needed to allow prosecution in either county where the offense or where the victim resides. LB307 also seeks to simplify the definition of stalking by removing the "seriously" terrifies language that prevents many cases from moving forward. I've been learning that keeping victims safe is the priority of the work to end domestic violence, but the criminal justice system must also do its part in holding offenders accountable, or the victim is doing nothing but looking over his or her shoulder continuously. This is one small way this session can do the right the thing and make these small changes to improve the outcomes for so many victims. Thank you for your time. I would be happy to take any questions. [LB307]

SENATOR SEILER: Senator Chambers. [LB307]

SENATOR CHAMBERS: There are other people who are going to testify on the bill? [LB307]

SENATOR KOLOWSKI: Yes, sir. [LB307]

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SENATOR CHAMBERS: Some of them I will hold my questions for, but I see on page 3, in line 13, where the definition is being given of stalking. [LB307]

SENATOR KOLOWSKI: Yes, sir. [LB307]

SENATOR CHAMBERS: And the word "disturbs" is there. What is that supposed to mean? To me, it's such a vague term it doesn't really say anything. Well, like I always say, it's like a big housecoat: It covers everything and touches nothing. So if they don't like the way I look that could be disturbing. If I sing and they can't stand it, they could be disturbed. I think...and those who testify can tell me why that word was put in and then there might be other questions. But that was the one that jumped out at me that I would ask you. [LB307]

SENATOR KOLOWSKI: Understandable, sir. And we had some of the same behavior going through the law very carefully, looking at language that had existed within the current laws as well as what we'd like to place in here. And I might say disturbed is more of disrupting to me. And you might have a different definition I think. It's open for interpretation or potential change. I appreciate that. [LB307]

SENATOR CHAMBERS: That's all that I would have. Thank you. [LB307]

SENATOR KOLOWSKI: Thank you. [LB307]

SENATOR SEILER: Any further questions? [LB307]

SENATOR CHAMBERS: Oh, one other. [LB307]

SENATOR SEILER: Yes, Senator. [LB307]

SENATOR CHAMBERS: Why is all the intent language being stricken, on page 2? [LB307]

SENATOR KOLOWSKI: Page 2? [LB307]

SENATOR CHAMBERS: Uh-huh, beginning in line 3. [LB307]

SENATOR KOLOWSKI: I think our new language was trying to replace that. I can have... [LB307]

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SENATOR CHAMBERS: Well, if somebody else will mention it, that will be fine. [LB307]

SENATOR KOLOWSKI: Someone else can... [LB307]

SENATOR CHAMBERS: Okay. [LB307]

SENATOR KOLOWSKI: ...I believe address that in more detail than I can, sir, when we look at that. [LB307]

SENATOR CHAMBERS: Okay. [LB307]

SENATOR KOLOWSKI: Thank you. [LB307]

SENATOR SEILER: Any further questions? Thank you. Are you staying for closing? [LB307]

SENATOR KOLOWSKI: Yes, sir. [LB307]

SENATOR SEILER: Okay. First proponent. Go ahead. [LB307]

JACEY GENGENBACH: (Exhibit 2) My name is Jacey Gengenbach, J-a-c-e-y G-e-n-g-e-n-b-a-c-h. I am a survivor of domestic violence. I have been working closely with the Hope Advisory Council, which is affiliated with the Domestic Violence Council in Omaha. November 11, 2012, is the day that forever changed my life, my son's life, and my family's life. My abusive ex-boyfriend had been stalking me, threatening to hurt me, and threatening to kill me. The more that I told him no and that I couldn't live my life like this, the more it set him off. He was escalating. I felt deep in my gut that something awful was going to happen. I called 911 for help. I was waiting for the police and he kept calling and texting my phone. I did not answer. I could tell by his messages that this was going to be it. I called 911 again to see where the police were at. The dispatcher assured me that they were on their way. It is within this call that my ex drove his car into my home through a closed garage door stall. He broke in through the dead-bolted door, and the house alarm by ADT was instantly set off. He came up the stairs in one big streak. He punched me in the face and I was instantly knocked down. He continued to punch me and knee me in the head and face. I knew he was trying to kill me. He was doing exactly what he had threatened to do. I had never had a chance to protect myself against him. I came to and it was an eerie silence, even though the house alarm was going off and my son was crying and screaming. I was taken to the hospital. I was told there that I had a broken nose. One tooth was knocked out, dislodged teeth, split lip, broken jaw, and several hematomas to my head and face. After I was discharged from the hospital, I was bombarded with follow-up medical and dental appointments

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and court proceedings. After three months of dental surgeries and treatments, it was determined that one of my teeth could not be saved. I told the prosecutor about this latest development. She said, I'm so sorry to hear this, but this is good news from our end, I can charge him with felony assault which carries a stiffer sentence. It didn't register with me until that moment that, even those other horrific injuries, that he would only be facing misdemeanor assault and possibly only six months on his sentence. I asked the prosecutor, why is that? Her response was, because that is how the law is written. I then said, okay, so why is everybody okay with that? Doesn't it seem that being knocked unconscious and broken bones, that should be more than a misdemeanor assault? She said, I don't think that everyone is okay with it, we just need some people to change it. In the end, my abuser was sentenced to 20 years for the felony assault. LB307 needs to pass to ensure justice for victims and to hold these offenders accountable. Thank you for your time. [LB307]

SENATOR SEILER: Questions? Seeing none, thank you for your testimony. [LB307]

JACEY GENGENBACH: Yes. [LB307]

SENATOR SEILER: Next proponent. [LB307]

LaTASHA EDWARDS: (Exhibit 3) My name is LaTasha Edwards, L-a-T-a-s-h-a E-d-w-a-r-d-s. I am here to speak on behalf of LB307 and on behalf of stalking victims. I am a 38-year-old mother of two currently employed as a CMA scribe. Stalking has completely changed our lives and the way in which we interact with people, our surroundings, the way we interact in our home, and the way that we sleep. Unless you've been stalked, you will never understand what it feels like to live in absolute terror. I filled out over 13 police reports in one month and nothing could be done before I obtained a protection order. I could not complete one police report before my voicemail and inbox were flooded with texts, multiple messages from my stalker Dammon Haynes. Dammon used texts as a form of code so that if the average person was to read them they would seem harmless. I often heard from other people, all he's doing is calling you, just don't answer, he said he loved you, what's wrong with that, maybe you just need to talk to him and he'll stop. The text messages and voicemails stating how he loved me, he just wanted to see me to apologize or make love to me would send chills down my spine. Dammon's texts were very specific in detail. He would use these as a way to make me aware that he was watching me. I would receive multiple text messages of how he was going to slice my throat, how I needed to watch my back. But still nothing was done until he started sending more terrifying messages: Who busted your window? Do you think changing the locks would keep me out? Dammon found a way to hack into my daughter's cell phone. He would communicate with me as if I was speaking with Jasmine. This was alarming because my daughter...he would make it seem like my daughter was in severe physical danger. He would call my son's school multiple times trying to

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get him out. Dammon and Angela (phonetic) Hill (phonetic) orchestrated ways to steal my identity. Even while he was in jail, after he was released, he used other third-party people to contact myself and my daughter. I believe if this statute would include communicating by electronic means, my situation would not have escalated. I am only 1 of 29 victims of Dammon Haynes. Thank you. [LB307]

SENATOR SEILER: Okay. Any questions? Thank you for your testimony. [LB307]

LaTASHA EDWARDS: Thank you. [LB307]

SENATOR SEILER: Next proponent. [LB307]

JULIE MEDINA: (Exhibit 4) My name is Julie Medina, J-u-l-i-e M-e-d-i-n-a, and I am a deputy county attorney for Douglas County working specifically in the domestic violence unit. I've been with the domestic violence unit for approximately eight years and I do both felony and misdemeanor domestic violence cases and I specifically do all of the stalking cases for our unit. The changes proposed today in LB307 will help to greatly assist prosecutors in charging and holding these perpetrators accountable for stalking crimes. According to the National Center for Victims of Crime statistics, they show that 76 percent of intimate partner homicide victims reported being stalked by their intimate partner months before their murder. When I receive a stalking case, I know that the lethality of this case has gone up exponentially. Stalking is the epitome of power and control, and these victims live in constant fear. It has become increasingly more difficult to prosecute these crimes and hold these perpetrators accountable under the current stalking statute due to the increased use of technology in stalking cases. No longer does that perpetrator have to hide behind a bush or follow the victim. These perpetrators can stalk from their own homes, behind their computer screens and their smartphones. They use third parties and, more importantly, stalk indirectly through the use of various applications available such as spoofing devices, GPS tracking systems, and applications such as StealthGenie. It is necessary to change the statute in order to fit the 21st century stalker. These proposed changes are minimal, yet they will make substantial changes in our ability to hold these offenders accountable. You heard today from Ms. LaTasha Edwards who was one of 29-plus victims of serial stalker Dammon Haynes who is to date the worst perpetrator I have ever prosecuted. Haynes stalked using technology to his advantage. He would find the victims' personal cell phone numbers, hack into accounts, text constantly. He was able to change the lights, phone, and cable so they would be turned off, mail rerouted. In one case, he used over 30 inmates from Douglas County Corrections in order to stalk the victim. The proposed changes to the stalking statute will allow us to stop that harassment of these victims prior to that escalation. The other proposal in LB307 addresses changes in the domestic violence statute. As the statute now stands, a victim who sustains substantial injuries is held at the same level as someone who sustains a

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slap or minimal bruises. And by that same account, that defendant is charged the same for a slap or push or someone who has given that victim substantial injuries. This statute will make that change. The proposes will make that change to make this more accountable and cause...for those who cause those substantial injuries to victims. The bill further addresses the disproportion in penalties from domestic assault to a regular assault that is nonviolent...that is a nonintimate individual. We know crimes of domestic violence have the propensity to reoccur and for the violence to escalate over time. And these changes will put those who commit crimes of domestic violence on an equal level as those who commit assault against nonintimate partners. I thank you for your time and consideration. And I would love to answer any questions that you may have. [LB307]

SENATOR SEILER: Senator Chambers. [LB307]

SENATOR CHAMBERS: I was asking what this word "disturbs" would embrace. Where they're listing it would be on page 3, in line 13, the words "threatens, intimidates, follows, detains, disturbs." What would "disturbs" mean? Did you draft this? [LB307]

JULIE MEDINA: I did help, yes, Senator. [LB307]

SENATOR CHAMBERS: Okay. So what did you all have in mind with that word? [LB307]

JULIE MEDINA: We looked at the model stalking code. And one of the things that I see as a problem is many times with the technological advancements, that we can't charge stalking and we have to charge disturbs the peace. So that's what that is entailing, that disturbs the peace of. It is actually in with the commas so it follows where "terrifies, threatens, intimidates, follows, detains, disturbs," so it's not necessarily that disturbs is the only thing. Particularly, as Ms. Edwards testified, it was disturbing, the continual text messages from this individual who she had been in this intimate relationship with. That is what we were thinking with that because even though an average person may not find that disturbing to her, it was terrifying because of the amount that was there. [LB307]

SENATOR CHAMBERS: Just so you'll be aware of my thinking, I think the word is too broad and I think it's too vague and it means different things to everybody. And it doesn't describe any specific kind of conduct that anybody would know in advance what it refers to. [LB307]

JULIE MEDINA: Okay. [LB307]

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SENATOR CHAMBERS: In drafting this, what would be the difference between "threatens" and "intimidates?" Those are two words that appear on line 13. [LB307]

JULIE MEDINA: The "threatens" is that direct threat, such as: I'm going to find you. I'm going to kill you. You're not going to get away from me. "Intimidates" are those types of things that are not direct threats, that again, when we're dealing with somebody in a domestic violence situation, that stalker or that abuser has intimate knowledge of that person. I had a case in my...what I handed out that I didn't have time to get into where he would leave flowers on her doorstep. That to a normal person would seem not intimidating, and to this victim was terrifying because this individual had said, I will leave you flowers at your funeral. So that is what intimidate is, is that it is terrifying but it's intimidating because it is not a direct threat. [LB307]

SENATOR CHAMBERS: The difficulty I see, a crime is being defined, the elements of a crime... [LB307]

JULIE MEDINA: Correct. [LB307]

SENATOR CHAMBERS: ...and if there is an act which is innocent, meaning it has no significance in and of itself, to make it a crime would mean that a crime exists now because somebody chooses to say this particular thing intimidated me. Now when you say "threatens," the words that are used can be looked at objectively to see if a reasonable person would see that as a threat. I'm not getting to the point of saying that what might be a threat and not intimidate me would not intimidate you; therefore, it's vague. I'm not saying that. I'm saying that there is an objective standard that could be applied to determine if something will be considered a threat by a reasonable person. Now how would "terrify" differ from "intimidate"? Can you be intimidated without being terrified, and can you be terrified without being intimidated? And I'm not trying to be argumentative. I just wanted to get the thinking of those who drafted the language. [LB307]

JULIE MEDINA: Again, we did take this out from other statutes, from other jurisdictions where it's worked. But I do believe you can be intimidated without having that threat, particularly in cases...again, this stalking statute will address all stalking. However, what we find most often is it's in domestic violence situations. And so in a domestic violence situation, one thing that we do know is victims do tend to minimize what is going on. And so I do believe that you can actually be intimidated and be a little bit scared and think this is a little strange. And as it continues in that pattern and course of conduct, it then becomes terrorizing. [LB307]

SENATOR CHAMBERS: Now when we get to the word "restraint" on line 14, does that refer to physical restraint? [LB307]

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JULIE MEDINA: That is my thought process. I know you're going to hear from Mr. Sandford and Ms. Muir who may... [LB307]

SENATOR CHAMBERS: Oh, okay. [LB307]

JULIE MEDINA: ...who may be able to answer that a little bit better. [LB307]

SENATOR CHAMBERS: Okay. Then you don't have to answer all those things. [LB307]

JULIE MEDINA: But as a prosecutor, any restraint on such person, yes, that is how I view that. [LB307]

SENATOR CHAMBERS: Okay. So it refers only to physical action,... [LB307]

JULIE MEDINA: I look at it that way, correct. [LB307]

SENATOR CHAMBERS: ...the word "restraint," okay. And I...did you determine that the intent language should be stricken, or somebody else did that? [LB307]

JULIE MEDINA: We actually did have a discussion about that. And our reason for that is we do use the word "intentional" to keep it at that objective standard in the statute itself. We felt that it muddied the statute. We were trying to streamline it. We certainly--I know Ms. Muir will address it as well--have no problem with it staying in. It just seemed to streamline it better. We do continue to talk about the intentional act, that it does have to be an intentional, an objective, reasonable person standard looking through the eyes of the victim's circumstances. So we do not propose to change that. [LB307]

SENATOR CHAMBERS: So you think if that language were in the statute, it would weaken the statute, or what? [LB307]

JULIE MEDINA: Yes, in the sense that I find that is confusing and... [LB307]

SENATOR CHAMBERS: Then how do we know what the Legislature's intent is in listing out these things, because standing alone, this language I think is broad. It's vague. It's capable of being interpreted two ways: one which would be innocent, one which would be criminal. And in a criminal statute, the language has to be clear. It has to let a person know what is allowed and what is not. And if something could be interpreted two ways then that is too vague for a criminal

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statute. And this isn't to argue, but whoever is coming up who can further explain these things, that person will know what I am thinking. Thank you. [LB307]

JULIE MEDINA: Thank you. [LB307]

SENATOR SEILER: Anybody else? I have just a couple questions. [LB307]

JULIE MEDINA: Yes. [LB307]

SENATOR SEILER: You seem to use the term domestic violence. I don't see where that's defined anywhere in your statute. Domestic assault is and intimate partner is, but I don't see...is that just your phraseology and not what the intent is? [LB307]

JULIE MEDINA: Yes, it is. We refer it as to domestic violence assault. Actually the statute itself is domestic violence assault. We call it DVA 3 is how we refer to it. But that is correct, Senator. That is just how our unit is used to referring to it. [LB307]

SENATOR SEILER: Okay. I just wanted to clear that up for the record. Have anything else? Seeing none, thank you for your testimony. [LB307]

JULIE MEDINA: Thank you very much. [LB307]

SENATOR SEILER: Next proponent. [LB307]

TARA MUIR: (Exhibit 5) Good afternoon, Senator Seiler and the Judiciary Committee members. My name is Tara Muir, T-a-r-a M-u-i-r. I'm the executive director at the Domestic Violence Council in Omaha. We're a private, nonprofit organization. We bring people together in Omaha and the Douglas County area to end domestic violence, sexual assault, and stalking. First and foremost, ending these crimes requires commitment and constant attention by community leaders, service providers, and the courts. We pulled the people together from the civil and criminal justice system to brainstorm what are some of the big barriers to holding offenders accountable for these kinds of crimes. The results of those meetings over two years are the changes represented in LB307. I'm handing out a copy of the updated 2007 model code of stalking that provides some really good background and insight to the stalking laws. You'll see we were very selective in trying to keep changes to a minimum. The intent paragraph that we proposed to strike that addresses the intent of the Legislature I can speak to a little bit. We wanted to strike it because we did want only one definition, being very clear about what stalking was. And a lot of the intent language that we are striking on page 2, lines 3-8, just had a lot of

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"willfully harassed, intentionally terrified," just a lot more words that we didn't want us to have to define and worry about. We understand that having the intent of the Legislature is important in the bill. So we're happy to keep it in as well. We just didn't want it to muddy the water of the course of conduct definition that we put in later. We're also in agreement. We don't intend to change the Supreme Court's interpretation that a reasonable person in a victim's circumstance should be the objective standard and not become any kind of subjective standard. We have no problem leaving that in for those reasons. Our group worked hard on trying to figure out how do we bridge this gap that we have between first degree domestic assault and third degree. And so we had an intern with Douglas County Attorney's Office to research what states had some good language. And we found Washington state with the "substantial bodily injury," and we're really hoping that that piece can pass out of the committee. But also attached behind that model code packet, the actual Washington state law we're borrowing for the substantial bodily injury language. Keeping victims safe is the number one priority. But just as important is holding those offenders accountable. And the system has to do that so the victim doesn't have to. We are hoping you'll move LB307 to General File. Thank you. Yes, Senator. [LB307]

SENATOR SEILER: Questions? Senator Chambers. [LB307]

SENATOR CHAMBERS: Who actually drafted this language? [LB307]

TARA MUIR: Our small group of people in Omaha with Douglas County prosecutors and Sarpy County prosecutors at the table. [LB307]

SENATOR CHAMBERS: Well, it seems to me, and what you said kind of bears it out, some language was taken from one source, some language was taken from another source. Then it was all put together. Is that the way they did it, a little from here and a little from there and a little from there and a little from a number of places? [LB307]

TARA MUIR: Well, we very specifically wanted to make sure we added the "communicating by electronic means." And what we talked about for quite a while was the way the current statute is you had the definition of harass kind of defining itself, and then that was also used in the stalking course of conduct language as well. So our first thought was let's start over and really focus in on what is stalking and what's the course of conduct that's required. So when we got to the point of there's all this additional language in the intent paragraph, what purpose is that intent paragraph serving? We didn't think it was serving much of one, so we thought deleting it would be the best way to go to keep it clean. [LB307]

SENATOR CHAMBERS: Are you talking about the intent language? [LB307]

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TARA MUIR: Um-hum. [LB307]

SENATOR CHAMBERS: That's not the...if it were a medical product, it wouldn't be called an active ingredient. It's stating what the Legislature had in mind and what the intent is. This is a discrete, separate, compartmentalized activity that is being considered. When the intent language is given...I didn't draft that language, but when the Legislature provides intent language, it's giving the court an idea of the purpose that the Legislature is intending to accomplish by whatever follows. When language is taken from different places and the places it's taken from--for example, if you say Washington state--their court may have construed and interpreted that language under Washington state law. So when a case comes up, they don't just look at the language of the statute. They look at the way the Washington State Supreme Court interpreted the language. We don't have the benefit of that. So all that is in the statute here are words which, to me, seem overly broad, are too vague. And sometimes the net is spread so wide that it defeats its purpose. A criminal statute is not going to be able to catch every nuance of conduct that somebody is concerned about. The more words that you put, the more difficult it is for a court to say precisely what was intended by these different words. The court is going to say that every word that the Legislature uses should have some meaning. But if words overlap and the Legislature does not say this word for this purpose means such and such a thing, it would be taken in its ordinary meaning otherwise. And if you take two words that have an ordinary meaning and understanding to people--and that's the way this statute is supposed to be written, so that ordinary people will read it and understand what they're allowed to do or not allowed to do--if lawyers can't say for sure what it means then it's too vague for ordinary people. So I am in agreement that what we understand to mean...what we understand the term domestic violence to mean should not occur. I'm not quibbling with that. But when you begin to use specific language, then I have an obligation to make sure that in my mind the language is clearly stating what you may do and what you may not do. So I'll ask you. What does the word "disturbs" mean?
[LB307]

TARA MUIR: I think in the context that we heard from Jacey and LaTasha, sometimes getting repeated texts is very disturbing to your peace. [LB307]

SENATOR CHAMBERS: But that's not what it says, is it? [LB307]

TARA MUIR: No, it doesn't. [LB307]

SENATOR CHAMBERS: And that's not what it means all the time, does it? [LB307]

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TARA MUIR: It doesn't, but it isn't within...it has to be within a course of conduct. So taking the definition as a whole...and I wanted to clarify one thing. We took this stalking definition from the model code. The Washington statute is only... [LB307]

SENATOR CHAMBERS: Well, the model codes, they put everything in it. [LB307]

TARA MUIR: Well, and that's...yeah. [LB307]

SENATOR CHAMBERS: It's like putting everything and you pick out what meshes with the law in your state. These are alternatives. And when you just take everything that's in there, it's not going to work as a statute as far as I'm concerned. [LB307]

TARA MUIR: Okay. [LB307]

SENATOR CHAMBERS: So I'm not going to put you through everything that I find fault with. But I don't think this is a clearly drafted statute, even though it's clear to me what's being attempted. But I don't think the way this statute is drafted is going to pass muster. Parts of it have terms that are generally understood. But I don't think "disturbs" would get it. [LB307]

TARA MUIR: Okay. [LB307]

SENATOR CHAMBERS: Suppose I said whenever she comes around me she disturbs me because we don't get along. So I don't want her around me. Do you think a judge would give me a protection order against you because I say your presence disturbs me? You don't have to say anything. You don't have to do anything. Just by being you disturb me. I'm trying to show you that these words...well, I'm repeating. But that's all I'll ask you. Thank you. [LB307]

SENATOR SEILER: Any further questions? Senator Pansing Brooks. [LB307]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Okay. It's Ms. Muir? [LB307]

TARA MUIR: Yes. [LB307]

SENATOR PANSING BROOKS: Yeah. Thank you for your testimony. So I was trying to compare the intent language that was stricken with the language on page 3, lines 9-14. And they're really quite similar except for the word "disturbs." So I'm just interested...but there is one part in the original intent language which I don't understand. Can you explain to me what...and

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you weren't there so probably that's why you struck it. But anyway, where it says, on line 7, at the end, "and which will not prohibit constitutionally protected activities," is that part of why you struck it? I mean I'm not quite sure what that means. [LB307]

TARA MUIR: In the model code, as they have a lot of background of how original stalking statutes were created and why, so kind of if you go through some of that history, I think it explains that they wanted to make sure there was a balance between interfering with anybody's First Amendment rights, any other constitutionally protected activities. I think that's still an important piece to leave in. So again, we can probably quickly address some of these concerns by leaving it in. We're fine with that. But I think in Nebraska law, it was put in initially because we wanted to make sure we weren't violating anyone's constitutional rights for speech. [LB307]

SENATOR PANSING BROOKS: Okay. Well, I guess I'm still confused about that because...so First Amendment rights of free speech versus the ability of somebody to not be harassed and intimidated, is that correct? [LB307]

TARA MUIR: Correct. What you'll find in a lot these kinds of cases, the person who's doing the stalking will say, well, I didn't mean anything by it, I love them and I'm just trying to convince them that we shouldn't have broke up, it's not stalking. Well, once you kind of cross a line and someone is afraid of what will happen next, that's where this criminal penalty comes in to say you've got to start leaving that person alone, you don't get to go bother them and say anything you want in front of them, you need to stay away. And if they don't then you've got even a better case to get them. [LB307]

SENATOR PANSING BROOKS: That's correct. I don't think that's constitutionally protected activity. That should be basically assumed in our lives then. [LB307]

TARA MUIR: Yes. [LB307]

SENATOR PANSING BROOKS: So I'm glad to have that portion out of it. So I could see why some of the intent language was messed with, but I also...I mean I think we could talk about fixing that portion of it. I understand my colleague's interest in the word "disturbs," but also we know that there are ways that people can intimidate and push buttons that may not seem like buttons being pushed to other people. And of course, it all has to do with testimony and context and the ability to determine what has been done in the past. So anyway, I just was interested in finding out what that "constitutionally protected activity" meant. So thank you. [LB307]

TARA MUIR: You're welcome. [LB307]

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SENATOR SEILER: Any further questions? I have one. While you're taking a look at that disturbs definition, take a look at the word "intimidates" and see if that's throughout the other statutes. That runs the gamut from being physically confronted to a passing term. And I'm wondering if that's a little too broad for criminal law. [LB307]

TARA MUIR: Okay. [LB307]

SENATOR SEILER: But take a look at that. [LB307]

TARA MUIR: I know that was in the original statute. [LB307]

SENATOR SEILER: It's on page...I will tell you. It's on page...Section 2, line 13. [LB307]

TARA MUIR: Yes. [LB307]

SENATOR SEILER: The rest of that--terrifies, threatens, follows, detains, or imposes any restraint on such person--that clearly shows stalking. Intimidates and disturbs is in that same sentence. And I'm wondering if that softens your criminal code too much. [LB307]

TARA MUIR: Okay. We can look at that. [LB307]

SENATOR SEILER: Just a thought. Yes. [LB307]

SENATOR PANSING BROOKS: Well, just along those lines, I do see that it was in two different places that have been struck previously in the prior law. And certainly intimidation is one of the significant factors used by people who are stalking and trying to intimidate those whom they are imposing their will on. [LB307]

TARA MUIR: Yes. [LB307]

SENATOR PANSING BROOKS: It's in the intent language and also in the part...in line... [LB307]

SENATOR SEILER: Yeah. [LB307]

SENATOR PANSING BROOKS: Line number 20. [LB307]

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SENATOR SEILER: Okay. I just want you to take a look. [LB307]

SENATOR PANSING BROOKS: Page 3. [LB307]

SENATOR SEILER: You'll probably find it and the rest of them. But it just seems a little broad for a criminal statute. [LB307]

TARA MUIR: And I agree, "disturbs" is a new word in this whole scheme. If it's too broad, we're happy to take that out as well because the other pieces that we really need are very important. [LB307]

SENATOR SEILER: Thank you. Any further questions or comments? Seeing none, thank you for your testimony. [LB307]

TARA MUIR: Thank you. [LB307]

SENATOR SEILER: Next proponent. [LB307]

ROBERT SANFORD: (Exhibit 6) Good afternoon, Senator Seiler and committee members. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d. I'm here today on behalf of the Nebraska Coalition to End Sexual and Domestic Violence in support of LB307. It is difficult to identify cases that result in convictions of second degree domestic assault when talking with prosecutors, court staff, and victims. In preparing my testimony, I talked with two individuals from different communities and found two different perspectives on second degree domestic assault. The first was from a rural community where second degree domestic assault is charged but often used as a bargaining tool for plea agreements. The second perspective was from one of the more populated counties in the state. In that county, second degree domestic assault is rarely charged and, instead, prosecutors routinely charge the crime as a third degree domestic assault. In both of these counties, we find similar results. The results are that offenders of a violent assault against an intimate partner like those described by others before me are often walking the streets because they either receive a very minimal sentence or the plea agreement included probation and participation in a batterer intervention program. These are individuals who have intentionally injured their intimate partner who now has an even greater fear of bodily injury. If the goals of society include holding individuals accountable for their actions and providing safety for victims, we need to recognize the impact current laws and practices have on these goals. Part of the process of holding an offender accountable requires victims and witnesses participate in the criminal justice process. The problem is that victims are more reluctant to participate in a process that results in a minimal sentence because there is no expectation that either

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accountability or safety will result from their participation. While supervision and batterer intervention programs can be an effective tool in changing the beliefs about violence and holding offenders accountable, they may not always be effective. To be effective and help bring about change, an individual participating in a program like a batterer intervention program must be open to the idea that they can and should change their beliefs and behavior. We have to recognize that a batterer intervention program provides a victim with approximately 1.5 to 2 hours away from a batterer out of 168 hours in a week. We must also recognize that, like no-contact orders and GPS monitoring of offenders, there is no 100 percent guarantee that an offender will comply and attend the batterer intervention program. Without a more reliable method of accountability offered through incarceration, safety for victims often remains a myth. For these reasons, we would ask you to support LB307 and it advance it to the floor for full debate. Thank you. [LB307]

SENATOR SEILER: Questions? Senator Chambers. [LB307]

SENATOR CHAMBERS: Did you help draft the language? [LB307]

ROBERT SANFORD: I reviewed the language after it had been drafted. [LB307]

SENATOR CHAMBERS: I still want to know why the intent language is stricken. I'm still wondering. [LB307]

ROBERT SANFORD: And I honestly don't know the answer to that. [LB307]

SENATOR CHAMBERS: Hmm? [LB307]

ROBERT SANFORD: I don't know the answer to that. [LB307]

SENATOR CHAMBERS: Oh, okay. Thank you. [LB307]

ROBERT SANFORD: It's something that I think that most of us would be willing to have a conversation about to try and clarify the issues that you've raised this afternoon though. [LB307]

SENATOR CHAMBERS: And for those who come and don't know how I look at laws, I don't read every law in the statute books. But when a proposition is brought to us and it's amending a law, even if there's language in the existing law, I may have a...find fault with it. And people will say justifiably, well, all we did was took what's already in the law and moved it over here. I said,

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well, this brings it to my attention and it shouldn't be in that first place in my view. So what I am known to attempt to do is amend language out of the existing law because much of this comes into being when I wasn't in the Legislature. There was not close, careful analysis. And as was done in this instance, they will take language from one state for one idea, language from another state. Let me put it this way: Each state has its framework for the law--state two, the same; state number three, the same. Each one has a complete discrete system. But when you take part from one, part from two, and part from three, they may not even go together with each other. They wouldn't work if you tried to take what's in one and put it with the scheme in two. And none of them may mesh with the existing law in a given state. And people feel, well, this sounds good. That sounds good. The other sounds good. So we'll just all put it...we'll put it all together. That's not the way I look at it. If it's not clear to me what it is then I'm not going to expect it to be clear to an ordinary person. And I'm trained in the law, not just having gone to law school but I read cases. And if the ones who bring it are not exactly sure what it means then a court can strike it down and say you don't know what it means. When you were debating it on the floor of the Legislature, there were differences of opinion as to what it means. So if those who are putting it out here cannot agree on what it means, it's not clear cut enough for the basis of a crime because criminal language has to make it clear to the person what he or she is allowed to, what he or she will be punished from doing...for doing. But if those who are bringing it don't know then it's too vague. And that's so the people who are not familiar with me will know I'm not necessarily attacking at all their purpose. It's how they do it. And even if people's feelings get hurt because they put a lot of time into it, I have a higher responsibility. And maybe my view is incorrect. But I only have my best lights to follow. So until I see a reason for having stricken the intent language then see other language that they want to put in there that they can't even show a justification for, I think there's work that has to be done on this bill. And even though I'm asking the questions, I'm not going to do all the work. But those who have an interest will. Senator Pansing Brooks is excellent at this, so I'm kind of deputizing her. (Laughter) I'm just kidding. I'm just kidding. But that's all that I have. Thank you. [LB307]

SENATOR SEILER: Any further questions? Would you like a rebuttal? (Laughter) Thank you very much for your testimony. Next proponent. First opponent. Go ahead. [LB307]

TED LOHRBERG: Thank you. Good afternoon, Chairman Seiler and members of the committee. My name is Ted Lohrberg. I'm an attorney in Norfolk, T-e-d L-o-h-r-b-e-r-g. I am here representing the Nebraska Criminal Defense Attorneys Association. LB307 strikes portions of the current law and removes language that clearly requires the element of intent to commit the crimes of harassment and stalking. The amended language of 28-311.03 would provide that stalking shall include a person who intentionally or knowingly and also add into there "recklessly engages in a course of conduct" through the language of the statute. We're concerned about the reckless element in this. For example, it seems like the actual act of stalking is actually an intentional act, not necessarily something reckless or accidental that I might do. The other

problem with the stalking language is it talks about holding somebody accountable for what a third person may do. And all of that put together, I may say something recklessly. I'm having problems with somebody. I make a reckless comment to a third person like, you know, boy, I feel like strangling her, not intending anybody to hear that except the one person I'm talking to. That person goes, repeats that, and the next thing you know you have somebody potentially being prosecuted under this statute. A couple other problems that we have, there's an element of unlawful in...on page 4 when it talks about inflicting...paragraph (d), line 6: "intentionally and unlawfully causing" things. It seems unlawful by banning it by the statute, it's already unlawful. That word causes problems for us. Also, the second portion of the bill talks about adding assault provisions already in the statutes of domestic assault statutes. Domestic assault statutes carry higher penalties than the assault statutes, and this added language is unnecessary. Prosecutors can currently prosecute people for regular assaults whether they're felony or misdemeanor assaults. And I understand that people like to treat the domestic assaults higher, but there's plenty of penalties there for just someone who commits a regular assault. And one of those issues in regards to the plea agreements and those sorts of things, you can have a good case, you can be defending a client who maybe is even innocent with the added penalties... [LB307]

SENATOR SEILER: Just a second. [LB307]

TED LOHRBERG: Am I out of time? [LB307]

SENATOR SEILER: Let me stop you. You've got a red light. [LB307]

TED LOHRBERG: I'm sorry about that. [LB307]

SENATOR SEILER: Senator Williams. [LB307]

SENATOR WILLIAMS: Mr. Lohrberg, would you continue on. I'm interested in that line of testimony. [LB307]

TED LOHRBERG: Well, I have someone that's charged with a whatever kind of assault. And because it's a domestic assault, there's increased penalties. And maybe I have a good case, maybe I have someone that's even innocent. And with the increased penalties, it becomes a plea bargaining case because, all right, we're going to go to trial. We're going to face these higher penalties versus rolling the dice, where if it was charged maybe what it ought to be charged to begin with--you hurt somebody, you hurt somebody--and let the jury or the judge decide whether the person actually committed that. But adding those higher penalties often becomes a problem for whether we're going to trial or not on a case. [LB307]

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SENATOR WILLIAMS: Were there other items in your testimony that you wanted to mention? [LB307]

TED LOHRBERG: Well, briefly, the language in regards to substantial bodily injury, I think that language is overbroad. I don't know what it means. I don't think it's necessary. We already have "serious bodily injury" for a felony assault. And I know there was testimony earlier, but the cases I've dealt with, a broken bone, things like that have always been dealt with as serious bodily injury. And I think it fits under those statutes under that definition. [LB307]

SENATOR PANSING BROOKS: I have a question. [LB307]

SENATOR SEILER: Yes. [LB307]

SENATOR PANSING BROOKS: Okay. Thank you for your testimony, Mr. Lohrberg. [LB307]

TED LOHRBERG: Yes. [LB307]

SENATOR PANSING BROOKS: I was just wondering, so go ahead on this substantial bodily injury language that you're concerned about. It talks about temporary but substantial disfigurement. So we did hear testimony where, thank goodness, the tooth came out because that allows there to be a felony. So somewhere somebody is not filing for just I guess swollen eyes or bruised... [LB307]

TED LOHRBERG: And maybe a swollen eye isn't a serious bodily injury. But I think certainly a broken bone is. And I don't have the language of the serious bodily injury statute in front of me, but I recollect it talks about the possibility of permanent disfigurement. And I think, at least where I practice, broken bones and serious injuries like that are considered serious bodily injury. [LB307]

SENATOR PANSING BROOKS: Okay, so being punched in the eye with no broken bone, to you, would not really be serious bodily injury or of a substantial nature? [LB307]

TED LOHRBERG: I don't think that would be. [LB307]

SENATOR PANSING BROOKS: What did you say? I'm sorry. [LB307]

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TED LOHRBERG: I said I agree. I don't think that that would be serious bodily injury if there was no broken bone. [LB307]

SENATOR PANSING BROOKS: Gosh, if I got hit in the eye, I would think that was a serious bodily injury and disfigure. [LB307]

TED LOHRBERG: I mean, under the language of that statute. [LB307]

SENATOR PANSING BROOKS: Okay. Thank you. Thank you very much. [LB307]

SENATOR SEILER: Do I interpret this right, that they're really setting three criteria: bodily injury; substantial bodily injury, almost being a temporary but substantial disfigurement; and then serious bodily injury. Is that the way you read the statute? [LB307]

TED LOHRBERG: I agree with that, I do. And right now, I think there's just bodily injury or serious bodily injury. [LB307]

SENATOR SEILER: Okay. Thank you. Any further questions? Thank you. [LB307]

TED LOHRBERG: Thank you. [LB307]

SENATOR SEILER: Any further opposition? Anybody in the neutral? Senator Rick Kolowski, you may close. (Exhibit 1) I will say that all the written materials that have been submitted shall be made part of the record. [LB307]

SENATOR KOLOWSKI: Thank you, Senator Seiler, and thank you, committee, for your input, very significant input, especially on language. We want it to be precise. We want it to be interpreted correctly. We want it to be something that will change and elevate this discussion to a point where this hopefully would become a new law and a just law as far as the domestic violence that you have heard about today would be dealt with properly and effectively. Your comments are very much on target and we as a group appreciate that. I know in my own past, if you served in the military you understand the UCMJ, the Uniform Code of Military Justice. You're under both the military code as well as the domestic code as far as laws are concerned in your life. In my life of work, I spent a lot of time, of course, with school districts and school district code of conduct or the building code of conduct that you share with students that are under you. And you want as much specificity, yet you know human behavior is what it is and technology changes around you at all times. And the delivery of threats or harassment or whatever else might be going on is as different and as broad as the range of people that you deal

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with on a daily basis. Having the expectation of decent behavior with one another is an important concept in the climate and culture of a building, like a school building, but it's also extremely important in our code. And I hope we can work together to get the definitions exactly where we need them. It's hard to put different pieces together. Senator Chambers addressed that very well, and it was not our intention to confuse. It's our intention to do something new and be precise and fair and just and equitable across the board for the victims of these particular situations. And I hope we'll be able to do that as time goes on. And I thank you very much for your time today. [LB307]

SENATOR SEILER: Thank you. Yes, Senator. [LB307]

SENATOR CHAMBERS: And just to make one thing clear, I'm not saying what is intended cannot be done. [LB307]

SENATOR KOLOWSKI: Absolutely. [LB307]

SENATOR CHAMBERS: For example, the electronic means of transmitting whatever the threat or whatever, I don't have any problem with dealing with the electronic. But when we say what is going to be transmitted, it doesn't do any good to get a lot of words into the statute that you want and then have a court say, well, this is too vague, when you could have brought...and I don't mean you individually... [LB307]

SENATOR KOLOWSKI: I understand, sir. [LB307]

SENATOR CHAMBERS: ...or even the people who drafted it necessarily. You can boil down that language to the kernel or what it is you're really concerned about happening. And rather than finding three words to try to say the same thing in different ways, find that one word which expresses what is really intended and then it's difficult for somebody to say this word could have more than one meaning. For example, if I say somebody slapped me, you don't have to write: A slap means that the palm is open...the hand is open and inner surface of the hand is what came in contact with the face with considerable force sufficient to cause a discoloration in the skin or to make the person feel pain. You don't need all of that. The more of that you put, the more escape hatches you make because if all of those things are a part of the offense, any one of them that is not there takes it all away. So if the word "slap" is generally understood, you don't have to define it. That's all. I took a lot of words to try to get across. But I wanted to mention some of the specific words so at least it would be clear what I'm looking at. And I concede. Mine may not be the best way, but I have to go by what, to me, seems to be the way to do it. So I'm not criticizing your bringing up the bill, the work that people did in trying to bring it together. But I'm

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something like the wheels of the gods which grind exceeding fine. But that's all that I have.
[LB307]

SENATOR KOLOWSKI: Thank you. [LB307]

SENATOR SEILER: Any further questions? [LB307]

SENATOR KOLOWSKI: It is our intention to be as precise as possible, yet to move this along and work with you with every intention of putting together the very best possible law that we can to protect those who are in need of this help. Thank you very much. [LB307]

SENATOR SEILER: Thank you. Senator Baker. Senator Baker, you may open on LB433.
[LB307]

SENATOR BAKER: (Exhibit 1) Thank you, Chairman Seiler, members of the committee. I'm introducing LB433 on behalf of the League of Municipalities. LB433 creates an offense of false presentation if a person presents an expired or fake proof of automobile insurance or other proof of financial responsibility to a peace officer, prosecuting attorney, or other official with intent to impede a criminal investigation or to acquire a motor vehicle registration. Violation is a misdemeanor. In addition, the court may, as part of the judgment of conviction, order the person not operate any motor vehicles for up to one year and order the operator's license to be revoked for up to a year. This is designed to address a problem of drivers who do not have insurance but who use false insurance cards to register motor vehicles or avoid prosecution. You know, part of this is brought on by e-insurance. I still have a fairly traditional card that a person could look at and see that it's authentic. E-insurance may be something that your proof of insurance is something you printed out on your printer at home, and it's easier to have bogus proofs out there. City attorney of Beatrice is here to give you more information on the need for this bill. And we're also...we sent out an amendment that would change the offense from a Class I misdemeanor to a Class II misdemeanor. I would take any questions. [LB433]

SENATOR SEILER: Senator Chambers. [LB433]

SENATOR CHAMBERS: Senator, are you going to have somebody testify specifically on this bill? [LB433]

SENATOR BAKER: Yes. [LB433]

SENATOR CHAMBERS: Okay, then I'll save my questions for whoever that is. [LB433]

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SENATOR BAKER: Thank you. [LB433]

SENATOR SEILER: Any further questions? Are you going to wait for closing? [LB433]

SENATOR BAKER: I will. [LB433]

SENATOR SEILER: Thank you. Next...first proponent. [LB433]

GREG BUTCHER: Good afternoon, Chairman Seiler, members of the committee. My name is Greg Butcher; that's G-r-e-g B-u-t-c-h-e-r. I'm the city attorney for the city of Beatrice. I'm here representing both the city of Beatrice and also speaking on behalf of the League of Municipalities. LB433, this is a bill that was basically called the false presentation bill. This is bill that was originally drafted last year and introduced in this committee as LB939. Briefly, that bill included some administrative provisions that the DMV would invoke. The SR-22 requirement for no proof of insurance, that attached a fiscal note of approximate \$200,000. We've removed that language this year to eliminate the fiscal issue. This bill grew out of an issue that both myself and a number of other prosecutors have noted, that currently under Nebraska state statute under a no proof of insurance citation, you're given ten days to provide proof of insurance to a prosecutor's office. That may be a local prosecutor or a county attorney. Within that ten-day period, if you provide proof of insurance, we do not file the citation and it's voided out. Well, what happened was in my specific situation was is we were given falsified insurance information. That person had also receive a citation for no valid registration. They had taken that falsified insurance that they got after their citation, took it to county treasurer's office, received a registration on the vehicle, and proceeded to come to my office with that fraudulent insurance information and ask me to void out their citation for no proof of insurance. For some reason, I don't know what it was on this specific date, but the insurance information that was provided to me, it was a printout from a computer, not unusual, but it just stepped outside the bounds of normally what we would consider and see. And it was from an actual reputable on-line e-insurance company. And so ultimately, I copied their information, took their information. I went back and verified that information with that reputable e-insurance company over the phone and found out that that person had not been insured with that company since 2012. They had gone on-line, filled out some information, and then ultimately printed it off but not pushed the final button to pay for the insurance premium. And so after that situation, we took that information to the county prosecutor in Gage County. And unfortunately, we were unable to come to a final definition of what we'd like to use, whether it was false reporting or the use of fraudulent insurance instruments, to prosecute this person. And at that time, that's where my office, we began to kind of search around other states. Unfortunately, we didn't find anything. We ultimately developed the false presentation statute that...bill that you see here today. And so this was organically grown through my work and then work as we passed this through the League of

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Municipalities and had it reviewed by a number of attorneys and also the League's committees. Ultimately, the senator also noted that there was...I have a red light on, so I'll hold up for a second there. [LB433]

SENATOR CHAMBERS: I'll ask a question then. Are you the one who submitted the amendment that we have? [LB433]

GREG BUTCHER: We also did recommend the amendment to Senator Baker's office. [LB433]

SENATOR CHAMBERS: Okay. [LB433]

GREG BUTCHER: And I can explain that if you'd like, Senator. [LB433]

SENATOR CHAMBERS: What ordinance...what it says, this is the language that would be added: "or any city or village ordinance enacted in conformance with Section 60-3,167." Does that section authorize cities and villages to enact ordinances addressing what we're talking about? [LB433]

GREG BUTCHER: That specific section does not. The section is also cited in the bill specifically, and that is the no proof of insurance state law, which makes that no proof of insurance or no proof of financial responsibility a criminal act. Under another section--and I think Rob Caples is going to speak after me and we can refer to it--there is a general section within the motor vehicle statutes, and I'm remiss of what it is at this time, but it give the cities and local municipalities the authority to implement any traffic regulation which is not contrary or prohibited by the traffic regulations. [LB433]

SENATOR CHAMBERS: So what would this ordinance say that you're talking about that a village...? [LB433]

GREG BUTCHER: For instance, an ordinance that would be in conformance with 60-3,167 would be a city ordinance which notes it is illegal essentially to drive on city streets or within the jurisdiction of the city without proof of financial responsibility. Thus, we could prosecute it through the city prosecution rather than the county attorney's office. [LB433]

SENATOR CHAMBERS: So you would be making a more stringent requirement than state law currently does. [LB433]

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GREG BUTCHER: I don't believe so. As I stated before, under current state law, we, city of Beatrice... [LB433]

SENATOR CHAMBERS: Here's what I'm getting at: Why would a city or village need to enact an ordinance when the state law covers this situation? [LB433]

GREG BUTCHER: In regards to false presentation, that's what you mean, correct? [LB433]

SENATOR CHAMBERS: Okay, then let's go...now that was to give you a chance...us to get past the red light. Now I'm going to go into the language in the green copy that you gave us. On line 7, at the end is the word "fake." In line 8, it's "counterfeit," and after "counterfeit," it's "false." What's the difference between "fake," "counterfeit," and "false?" Or is this like Charles Dickens who is paid by the word and they say several words that really mean the same thing, or where it's difficult to distinguish one from the other? So what I'm asking you to do is distinguish each of these three words from the other two so I'll know why you have three words which seem to me to be saying the same thing. [LB433]

GREG BUTCHER: Well, if I were to say that I completely thought about that before, I would be lying to you. [LB433]

SENATOR CHAMBERS: Say it again. [LB433]

GREG BUTCHER: If I were to say I completely thought about this situation before, I'd be lying. But I will say is I believe that "fake" refers to that the actual instrument, the item that I'm handing to you is not valid to its intent. This is not...if I had a State Farm insurance card and it's created entirely in my own home, it never existed anywhere, it was never authorized to me. [LB433]

SENATOR CHAMBERS: Well what's the difference between that and "counterfeit"? [LB433]

GREG BUTCHER: I would argue that those may be the same. [LB433]

SENATOR CHAMBERS: And then "false." [LB433]

GREG BUTCHER: "False" could be an item that was possibly made and been altered in some way. So at one point it existed as a valid instrument, and then that instrument has been changed. Or the instrument as it's initially presented, say it had six months of coverage but that six months

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of coverage now does not occur anymore. That item would be false because it looks on its face to be covering a six-month period, but in actuality it is not. [LB433]

SENATOR CHAMBERS: Then why didn't you use the word that used in your description, such as "altered"? Why didn't you say "altered" instead of "false"? [LB433]

GREG BUTCHER: I do not know, Senator, but... [LB433]

SENATOR CHAMBERS: You're guilty. (Laughter) [LB433]

GREG BUTCHER: I'm guilty. [LB433]

SENATOR CHAMBERS: Okay. Now on line 10, we're talking about a "peace officer, prosecuting attorney, or other official." An official could be the head of the street department. It doesn't say, an official charged with the enforcement of anything pertaining to what we're talking about, but any official. So what officials did you have in mind other than a peace officer or a prosecuting attorney? [LB433]

GREG BUTCHER: And this probably relates more to the...in the obtaining of a registration. The official we'd be referring to there is a county treasurer who you would go to to obtain your registration or one of the employees of a county treasurer's office. So that's the official that we would be referring to in that point. I would that you're not talking to a Department of Roads person with the intent to impede a criminal investigation. [LB433]

SENATOR CHAMBERS: What can you not do right now that you're trying to do without this? If this is not put into the statute, what are you prevented from doing? [LB433]

GREG BUTCHER: If this is not...what I am prevented from doing is initially halting the ability of county officials...it provides a deterrent on the county level for county treasurers. Right now I have no deterrent to inform people that if they're showing me false information, that the act of showing me that is criminal. And so right now we have base-level officials who are receiving...as many of you may know, we have the electronic verification system for insurance. And that catches a predominant number of our registrations. But a good number of registrations come in and they're required to show a physical proof of responsibility or evidence of insurance. Those ones that the officials at county treasurer's office, for instance, they don't sit there and verify that beyond the point of, well, it looks official, it has the proper dates, it covers the proper vehicle. They don't call the agent on every single one of them. And so what I'm...the intent of this is to try and prevent people from defrauding basically public officials, police officers, officials in

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treasurers' offices, and myself. We spend a lot of time in my prosecuting office reviewing insurance information, calling to verify it. [LB433]

SENATOR CHAMBERS: Well, aren't you paid to do that? Isn't that a part of your duty? [LB433]

GREG BUTCHER: We are, but I have, as a singular prosecutor in the city of Beatrice, have a number of other things I'm also paid to do and I have a limited amount of time to do it in. [LB433]

SENATOR CHAMBERS: Well, maybe they ought to give you some help, shouldn't they, instead of asking us to change the statute so that you can handle your duties that you're paid to carry out? You have too many duties to carry out as a single person in your office, that's what you're telling me. [LB433]

GREG BUTCHER: Quite possibly. [LB433]

SENATOR CHAMBERS: So you need assistance there instead of asking me to change the law. But I'm going to ask you something else. In line 16: "The court may" stop a person from operating a vehicle and order the license "revoked for a like period." Is there anything in the law right now that allows a court to order the revocation of a license for any purpose? [LB433]

GREG BUTCHER: In the matters that I prosecute, I do not believe so, that I know of. Now... [LB433]

SENATOR CHAMBERS: So why would we say that the court may do this which means...and they're writing articles now about white privilege. A white guy comes up. And let's say that whatever it says here, a misdemeanor. And a misdemeanor has no minimum sentence. So you come up in your suit and attired the way the judge would be attired under his or her robe...under his robe. So you are convicted of a misdemeanor, or the judge can dismiss it. But if you're convicted, no minimum so no jail time, no probation. And you're told don't do this any more. And nothing is said about revoking your license or preventing you from driving. I come and the judge says, you're guilty, one year and you are not going to drive your car for a year. And if you're caught driving under suspension, under the law that's a crime and you can be locked up for that, too, for 90 days. I don't trust this kind of legislation. Why would you make it optional or discretionary with the court to prevent a person from driving rather than saying it shall so that everybody is treated the same way? Do you think that's too harsh? [LB433]

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GREG BUTCHER: I think at this time, the full penalty, to make it nondiscretionary may make it too harsh, that there should be considerations for if we have a person that comes in and they're on...they've already had three no proof of insurance citations in the last year. And all we can do is limit it. There's no ramping up of that situation. In this case, if they're also trying to defraud a public official I think that would give a judge a basis to go, well, based on the track record we have here today and the information provided to us... [LB433]

SENATOR CHAMBERS: How is it trying to defraud the public official when you're not trying to get anything from the official? [LB433]

GREG BUTCHER: But you are trying to get something from the public...you're trying to obtain a registration or you're trying to get out of a ticket you've already received. [LB433]

SENATOR CHAMBERS: Is that defrauding the public official or misleading the public official? You're not depriving the public official of anything of value. You're trying to gain something by misleading. Just like if I tell a cop a lie, I'm not defrauding the cop. [LB433]

GREG BUTCHER: No, you're correct. [LB433]

SENATOR CHAMBERS: They call it false information or whatever. [LB433]

GREG BUTCHER: It is misleading. You're correct, Senator. [LB433]

SENATOR CHAMBERS: I'm not sure about this bill. But I wanted to put some things out there so you could see that, from my point of view, I have substantial problems with it. And the two words in line 10 which says "other official," it doesn't limit it to those individuals who have anything to do with the granting of some of the things we're talking about here--any other official. And to let the villages and the cities begin to enact ordinances that are going to tie a into a criminal statute is not something that I'm eager to do. But my colleagues, you may have enough votes among them because some of them are pretty hard-nosed on these things. But that's all that I have to ask you. Thank you. [LB433]

GREG BUTCHER: Thank you, Senator. [LB433]

SENATOR SEILER: Senator Pansing Brooks. [LB433]

SENATOR PANSING BROOKS: Thank you. I guess my question is, Mr. Butcher... [LB433]

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GREG BUTCHER: Yes. [LB433]

SENATOR PANSING BROOKS: ...I guess I'm looking at line 7 about furnishing expired insurance card. And I don't know if you've had children who are college aged, but by the time...I mean these things come all the time at different points. And kids who are away at school possibly or something, to get it from the insurance company to...my husband tries to get it put out to everybody and it's sent. Or he'll bring it home and it will sit on the counter. It's very easy for one of them to not realize their insurance card has expired and they haven't picked up the right one on the counter. And they're driving around and...or they happen to just go in and know that their...that one of us says it's time to go in and get your license, your registration updated. And you hand the card. I mean it basically says if they furnish an expired card, they could be guilty of a misdemeanor. [LB433]

GREG BUTCHER: Well, also note the intent. They also have to intent to impede a criminal investigation. Or if they... [LB433]

SENATOR PANSING BROOKS: Or to just...intent to acquire a motor vehicle registration. That isn't intent to impede, at least as I read it. Or it's intent to acquire. Intent to me doesn't say "and," it says "or to do this, or to do this." It doesn't say the intent to impede a criminal investigation and to get a motor vehicle registration. So it says, to me, if you use the word "or," that means that they could just be going there with the intent to acquire a motor vehicle registration and if they...and again, I agree that certain people have a little bit more privilege to be able to give them the benefit of the doubt. But I would just explain that I would have great concerns because with five people in our family and the cards coming at different points for different cars, it isn't as easy as sometimes it might seem it would be. Anyway, so I think the expiration part is problematic. I think that people can reasonably have an expired license by accident, intend to pass it in or the registration, not realize it. And if somebody decides...if one of the officials at the Department of Motor Vehicles decides that you intentionally gave me this license...this proof of insurance that is expired with the intent to get a motor vehicle registration, I don't know how...I mean I find that problematic. Thank you. [LB433]

GREG BUTCHER: Thank you, Senator. [LB433]

SENATOR SEILER: Anybody else? Senator Chambers. [LB433]

SENATOR CHAMBERS: This could have been--forget everything else I've said--this could have been labeled an infraction, couldn't it? [LB433]

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GREG BUTCHER: Could be. [LB433]

SENATOR CHAMBERS: But you chose to make it a misdemeanor. [LB433]

GREG BUTCHER: That is correct. [LB433]

SENATOR CHAMBERS: And there is in the minds of the public and people in general a difference between a traffic infraction and a misdemeanor. They don't realize that a traffic infraction is a crime under Nebraska statute, but everybody knows that a misdemeanor is. So if you show this or display it or present it then you'll become a criminal for doing that. And we're really talking about not somebody who is in an accident,... [LB433]

GREG BUTCHER: No. [LB433]

SENATOR CHAMBERS: ...not somebody who left the scene. It could be where you're getting a traffic ticket for...or you being checked because you have a taillight that doesn't show. So then you say, show me your proof of insurance. And you hand them this proof of insurance. And let's take the example Senator Pansing Brooks gave. It's expired. Then that would put the person under this because it was displayed to the officer and the officer could argue, I told this person I had stopped him or her because of a defective traffic light...taillight. And when I asked for proof of insurance, this person gave me an expired insurance card. I was conducting a criminal investigation. So that makes this person not only guilty of having the defective tail light but also the crime of impeding your investigation by giving you an expired insurance card. And you can say a person is presumed to know whether the card is valid or not. And the person could have told me that my insurance is expired. But the person was hoping that I wouldn't be attentive, would not notice it was expired, and then they would not get a ticket for driving with an expired insurance card. You trust the police more than I do. I wouldn't trust a cop as far as I can see through that wall with my eyes. And I'll tell you why, and you probably know this. They only ones who are allowed by the courts explicitly to lie are police officers when they're interrogating somebody. I'm sure you've seen cases where the Supreme Court has said police officers may lie when they're interrogating a suspect. And if you haven't seen such cases I'll show them to you. So when the courts allow officers to lie, and I know officers lie, I'm not going to give them anything that will let them lie some more. I just saw yesterday in the paper where the Iowa Supreme Court said that if a state trooper in Iowa stops a person on a pretext--that means there's no valid reason--and finds what they call drug money, they can take it even though the stop will not hold up. And the U.S. Supreme Court has condemned pretextual traffic stops. But there's a court that said cops can do it. And the cops know what they're doing. And they shouldn't do it. And they admit, I didn't stop this person because of that, I knew that they were coming from one of these drug states and I needed a way to stop that car, and when I stopped it, I found what I was

looking for. It should have been thrown out. In other states it would have been, not in Iowa. So these cops are encouraged to lie. They're encouraged to use violence. Just the other day a man was shot in the back. The cop shot at him four times, hit him three times. And the chief said, well, the question is whether the officer felt he was in imminent danger at that time. And the man had his back to the cop. And from the way the cops described it, he was on the hood of a car. He put his hands...he was putting his hands on the fence. How can they say he had his hands on the fence but was reaching into his waistband? I read what they say. They described him as having his hands on the fence. Well, his hands--unless he's an octopus--can't be on the fence and in his waistband. And if his back is to the cop, how did the cop know his hand is in his waistband? And did the cop feel that he was in imminent danger when a man is on the hood of a car trying to go over a fence and I need deadly force because I'm in imminent danger? And this same chief said when he was in an interview, well, he had spoken at a press conference and a reporter was asking him, you say you've got the cameras on the cruiser that recorded it all. Are you going to release that? He said no. Well, why not? Because a grand jury is going to investigate and we don't want to taint the grand jury. Then he says, he says that it doesn't seem like anything criminal was done. So what is he doing other than expressing an opinion that could influence a grand jury? But he doesn't want to give the evidence that would indicate one way or the other what did happen. Cops lie. Even chiefs of police don't tell the truth. So when somebody brings a bill like you're bringing...I'm not impugning your motives at all. I'm impugning intentionally, deliberately, and knowingly what I feel police officers would do with legislation like this and, once the wheels began to turn, what you then as a prosecutor would do with something like this. Let's go back to Senator Pansing Brooks's issue of the expired insurance card. If the officer filed a charge or issued a ticket on the basis of this expired insurance card, would you charge anything more than driving with an expired insurance card, or would you try to then invoke what is allowed under this statute so that you could get that person for an independent misdemeanor? [LB433]

GREG BUTCHER: My intent would be, if I was involved in that specific situation you involved, would be to ask the defendant themselves when the officer would probably...we would hope the officer would note this insurance card is expired. Oh, it is. Sorry. And then they would be given the opportunity under the ten-day state law for no proof of insurance to come provide my office proof of insurance. [LB433]

SENATOR CHAMBERS: Then why do you put expired under here? Why don't you just leave that out and let an expired card be dealt with just as that and don't include it as one of the elements of a crime? [LB433]

GREG BUTCHER: And maybe that's the way it should be done, as Senator Pansing Brooks noted, is we need to fine-tune down the language that's included in here. Again, the intent was is where we identify this chiefly is through the prosecuting offices. As also the testifier after me

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from the city attorney of Lincoln's office will note, is we're identifying these chiefly within the prosecution office when they're brought to us. And we're required to do the litany of checking on it, where we call up the insurance agents and... [LB433]

SENATOR CHAMBERS: Yeah, I know what they're supposed to do. They don't do all that. And most people are not going to have a lawyer, so they're going to go along with whatever the program is. And you can't say what every prosecutor will do with something like this. And I wish that you'd try to get you some more help in your office instead of bringing something like this if I had my druthers. But that's all that I have. [LB433]

SENATOR SEILER: Anything further? Senator Williams. [LB433]

SENATOR WILLIAMS: Thank you, Senator Seiler. Mr. Butcher, sometimes we get away from what maybe the reality is here. And I want to go back to why we have insurance cards to start with because the public policy that's been created in our state of not having people driving uninsured and causing damage. And the case that you're in particular talking about was a case where a person intentionally went in and acquired a registration by presenting information. [LB433]

GREG BUTCHER: That's correct, Senator. [LB433]

SENATOR WILLIAMS: And that's what you're trying to get at here, right? [LB433]

GREG BUTCHER: Yes. [LB433]

SENATOR WILLIAMS: How often does that happen? [LB433]

GREG BUTCHER: We do not know. I can only speak to the number of times that I've been able to track it down myself where, from the initial citation on when this originally happened, we get it a handful of times throughout the year. And obviously I have one of the smaller prosecuting offices. Mr. Caples can speak to the city attorney's office in Lincoln. [LB433]

SENATOR WILLIAMS: Do you normally, and I have no idea how this would work, when someone is cited for not having proof of insurance or an expired, and then they bring in that card during the ten days, do you normally try to check to see if that's real? [LB433]

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GREG BUTCHER: Yes. We normally try to obtain the information, get a copy of the information because we understand that people have other things to do. They don't expect to come to our office and sit there while we call up their insurance agents and verify. And so many of our insurances are provided by insurance agents locally, but we also get insurance coverage that's from companies we've never heard of, on-line companies. And those take an extensive amount of time to get ahold of somebody that will actually provide the information to us and verify it. And so there's an extensive amount of time that's involved. One of the specific ones that we're required to do, and this instance happens a lot, is that somebody is out, they get a no proof of insurance citation, they sign up for insurance that day, after the citation. As you know, your insurance cards don't note the time that you signed up for them. They bring in that proof of insurance and on its face, it shows that on that date they had insurance. Of course, it's the first date but it is on that date. Well, then we have to independently verify at what time they signed up. And we ultimately find out that they may have signed up an hour or later that evening when they got home. And then we have to ask the coverage company would they have been covered at the time if they were involved in an accident. And that's the threshold for determining if you would move forward with a prosecution for no proof of insurance. So there can be an extensive amount of time involved in trying to verify that information. [LB433]

SENATOR WILLIAMS: Okay. Thank you. [LB433]

SENATOR SEILER: Any further questions? Senator. [LB433]

SENATOR CHAMBERS: Do you mean to tell me you've got time to do all of that and then say you've got too much work to do? All that checking that you told this man, what time of day was this in effect? What is the hour that it took effect? But here's something else that I'm getting to, because Senator Williams, sympathetic soul that he is, was trying to bail you out because you're a young guy and he's sympathetic to young people. I can't be sympathetic to young people... [LB433]

SENATOR WILLIAMS: I'm not to older people. (Laughter) [LB433]

SENATOR CHAMBERS: ...or I'd be sympathetic to everybody in the world because I'm older than everybody. But he said you're dealing with people who have obtained this false documentation. But these two words "expired" and "canceled" indicates that they had it legally and lawfully. They did not acquire it inappropriately. So although he was giving you a way out, he thought, it didn't work because this is the language you put in here. If it's expired, it had to have been in effect at some point. [LB433]

GREG BUTCHER: That's correct, Senator. [LB433]

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SENATOR CHAMBERS: If it was in effect, it was legally obtained. [LB433]

GREG BUTCHER: That's correct. [LB433]

SENATOR CHAMBERS: Canceled means that the person, for whatever reason, after having got it had...the company said it's canceled. What is an insurance card canceled for other than nonpayment? [LB433]

GREG BUTCHER: An insurance card, it could be canceled by the insured. The insured could call up, purchase insurance, state, I want insurance for a period of six months and I pay on a monthly basis. They pay their first month's premium. And at that time then they call up and they say, I'd like to cancel that policy. The insurance company doesn't request that they put the cards back in an envelope and send it back to them. And so the insured themselves could have canceled the policy. [LB433]

SENATOR CHAMBERS: But at one time, that... [LB433]

GREG BUTCHER: It did...it was in effect correctly, and valid, yes. [LB433]

SENATOR CHAMBERS: And it was legally obtained. [LB433]

GREG BUTCHER: Yes. [LB433]

SENATOR CHAMBERS: Right, okay. That's all that I have. Uh-oh. [LB433]

SENATOR SEILER: Senator Ebke. [LB433]

SENATOR EBKE: Okay. Help me out here. Why can't we just plug the VINs into a central registration or, you know, some sort of a computer system and know who's got insurance? I renewed our registration last month. Didn't have to take a proof of insurance in. They ran it through the cycle on-line and in five minutes I had my registration processed. [LB433]

GREG BUTCHER: Senator Ebke, you're absolutely right. We have the electronic verification system which most of the large insurance companies are registered through. And when you sign up for your information, that system is updated twice a month with information. And so it's not in real time. It's updated twice a month. And then also there's a number of insurance companies that are just not verified through that system. And so when you go in there are number of people

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that will have to provide, for instance in a registration situation, that will have to provide a physical copy of their insurance information. [LB433]

SENATOR EBKE: But twice a month is more accurate than the yearly card that I get, right? It would be updated...if it's updated twice a month, that's more likely to be accurate than the card that somebody presents. [LB433]

GREG BUTCHER: And you're correct, Senator, but there's a number of...for instance, on the front line in regards to an officer, if they're not in the system because their insurance company is not registered through the e-verification system, when they go out and you provide your proof of registration and your registration...your insurance, your registration, your license and the officer goes back to check in the NCJIS program for the state, it's not going to list any insurance. It's going to say uninsured. [LB433]

SENATOR EBKE: Even if they've got a card? [LB433]

GREG BUTCHER: Even if they have a card because there are some that do not register through that program. [LB433]

SENATOR EBKE: So the assumption though is that if the card, in that instance, if the card says expires three months from now, that it's valid, right? [LB433]

GREG BUTCHER: Yes. [LB433]

SENATOR EBKE: So there's not going to be any further... [LB433]

GREG BUTCHER: At that time the officer most likely would just return the card and note that it looks to be valid and they would not be prosecuted. [LB433]

SENATOR EBKE: Okay. I have to ask one more question. The question about the time of day, what's the goal of having proof of insurance or not having proof of insurance? [LB433]

GREG BUTCHER: This is due to a prosecutorial element. If I take in...if somebody is cited for no proof of insurance, they go out that day, they get insurance later that evening after they get home, they've got insurance and on the card on the face of it, which would be their evidence if they showed up to court, they would provide that as evidence of I did have insurance, I shouldn't be prosecuted for this item. Well, the judge will say, well, prosecution, you have to prove this

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beyond a reasonable doubt, show me how they didn't have it. At that time, I need to be able to provide proof that they did not, at the time of the citation, actually have coverage that would have covered them if they were involved in an accident. [LB433]

SENATOR EBKE: What's the fine for not showing proof of insurance? [LB433]

GREG BUTCHER: Up to \$1,000, I believe, fine. And then you can also have your motor vehicle registration's license suspended, and you would also be required to hold SR-22 insurance for a period of up to three years. [LB433]

SENATOR EBKE: Okay. Thanks. [LB433]

SENATOR SEILER: Seeing nothing further, you may step down. [LB433]

GREG BUTCHER: Thank you, Senators. [LB433]

SENATOR SEILER: Next proponent. [LB433]

ROB CAPLES: Chairman Seiler, members of the committee, my name is Rob, R-o-b, Caples, C-a-p-l-e-s. I'm a proponent on behalf of the city of Lincoln and also the League. And in particular, I was here to speak to the amendment in which there was already some questions about regarding adding some additional language to allow city and village ordinances made in the conformance of the state law already existing for state...and the cities already do this. The city of Lincoln prosecutes people for not having insurance, citations are issued. Just as in Beatrice as in Lincoln, you're cited and charged under a city ordinance rather than a state law. They're overlapping jurisdictions. We do it at the city level. The county attorney doesn't have to do all of the traffic-related citations for the entire county. We handle in the city of Lincoln. We're asking in the amendment part to just indicate that is not only illegal to lie a county attorney regarding state law, it's also illegal to lie to the local officials at the city level in order to rein in what is a real problem when...and Mr. Butcher has told the committee about what we deal with. People come in, they show us stuff, and we have to verify it. And it's...keep in mind, this is only affecting people that are driving without insurance. This does not affect college students that have insurance. This does not...this bill here would not affect anyone who has valid liability insurance on their car. This is only for a person who is driving a car, they got a ticket for not having insurance, they don't have insurance, and they come down and they're just trying to get out of it because they don't want to go to court and face a Class II misdemeanor which is the penalty for driving without insurance. So you can be held to a Class II...it is a misdemeanor, driving without insurance. It's not a traffic infraction. You can go to jail for it. You can get a fine.

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And then the court does not revoke you or suspend you at that time, but the Department of Motor Vehicles then will. And then you have to put insurance on file with the state. So people don't want that. So it's easier to get a policy of insurance, get a...cancel it later, add it to a policy that didn't include the time. And keep in mind it's the...and the statutes, as they exist, put the burden on the person who does not have proof in the car to come to the prosecutor, whether it's the local prosecutor or the county attorney, with proof that the insurance was in existence at the time. And the statute says at the time. So it's not just a day thing, it's a time thing. So if you had...if you get your ticket at 10:30 in the morning, you get your insurance at 11:30 in the morning, that's not enough to get you out of the ticket. So people bring us all kinds of things, and it's our obligation to make sure that it's current and effective for the time. And I hope never to prosecute anybody for this offense; however, it does serve as a deterrent. [LB433]

SENATOR SEILER: Any questions? Thank you very much. Next proponent. Seeing nobody leaping from their chairs, next opponent. Go ahead. [LB433]

TED LOHRBERG: Good afternoon. My name is Ted Lohrberg, T-e-d L-o-h-r-b-e-r-g. I'm an attorney in Norfolk, Nebraska, and I'm here on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to this bill. I will be fairly brief. I think a couple things. One, it seems like this bill is unnecessary. The issues I think are already covered under a false reporting statute, which is...I'm sorry. I have the wrong one written down. Anyway, it's already covered under false reporting. It talks about other officials in the false reporting statute itself. [LB433]

SENATOR SEILER: How about 28-907. [LB433]

TED LOHRBERG: Thank you. In regards to the expired and canceled presentations, I, in particular, often are dealing with indigent folks that have their insurance canceled or expired. They give them the wrong card. And it's going to add to their problems. There's already an underlying prosecution potentially for no insurance. This could add to another serious charge for this false presentation. And further, I think it gives an officer a reason to dig farther into what's going on with this person. We're talking about a Class I misdemeanor. I understand there's been an amendment to make it a Class II. But it's still a misdemeanor. I get pulled over. I have an expired card. I may even have valid insurance. I hand that to the officer. He's probably got probable cause for a misdemeanor having been committed. I'm looking at potentially being arrested, my car searched, the search incident to arrest. And we go down that road potentially with folks that maybe even officer has a hunch about somebody but no real evidence. And is this a statute that I think they could use to abuse those folks. That's all I have. Take any questions. [LB433]

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SENATOR SEILER: Any further questions? Seeing none, thank you for coming and testifying. [LB433]

TED LOHRBERG: Thank you. [LB433]

SENATOR SEILER: Next opponent, opponent. Seeing nobody, anybody in the neutral? (Exhibit 2) The record will be supplemented by the written reports. And, Senator Baker, you may close. [LB433]

SENATOR BAKER: I'll be brief. I'm glad there's attorneys and others of you willing to look at the little details. Part of my willingness to bring this forward is because of personal experience. I had, you know, more than 20 years ago was going down a two-lane highway with my family, and a teenager, responsible girls at the Dairy Queen across the street pulled right in front of me. Collision was unavoidable. Turned out that the person...that the family did not have insurance. I did a little checking, found that this particular kid had a mean stepfather who would likely beat him over the incident, and may have, or beat his mother. Like they say, it's hard to get blood out of a turnip. End up saying, well, we want a family friend to fix it, and did a lousy job. I kind of gave up on it. I mean it came back with the steering wheel upside down and it looked horrible and I just got rid of the car. So you know, I felt like, how can this be? Aren't you required to have insurance or be financially responsible if you're driving a car? And I guess that was an eyeopener for me. I don't know what the right answer is. You folks have to give me the signal. If you want me to work with people to refine what we've done, we'll do it. If you're going to let it drop, give me that signal, too, and I won't waste my time or theirs. Thank you. [LB433]

SENATOR SEILER: Thank you very much. Anybody have any questions? I think I saw a report not long ago that 75 percent of the cars driven in Louisiana do not have insurance. So it is a problem. Senator Kintner. [LB433]

DAN WILES: He's on his way. [LB433]

SENATOR SEILER: Okay. Thank you. Senator Kintner, proceed with LB612. [LB433]

SENATOR KINTNER: (Exhibit 2) Well, thank you, Mr. Chairman and members of the Judiciary Committee. I'm Senator Bill Kintner, B-i-l-l K-i-n-t-n-e-r. I represent Legislative District 2, and I'm here to introduce LB612. LB612 amends Section 28-1409 to strengthen Nebraska's self-defense laws. Section 28-1409 is the statute that delineates the conditions that must be present when force or deadly force may be used and considered justifiable under the law. Currently, this section of Nebraska's self-defense statutes also requires that in certain circumstances a person

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must retreat from using force outside their home or business. LB612 amends this section of law to strengthen and clarify when the use of deadly force is justifiable and when it's not justifiable. Moreover, it removes some of the requirements for a person to retreat when outside the home or place of employment. Specifically, LB612 recognizes subsection (4) that deals with when deadly force is justifiable and when it's not justifiable. On pages 2, line 26 and 27, LB612 adds the felony crimes of robbery, arson, and burglary to the current list of death, serious bodily harm, kidnapping, and sexual intercourse compelled by force in which deadly force may be justifiable. These justifications in subdivision (4)(a)(i) could happen outside of the home, place of employment, or an occupied vehicle, while the next two subdivisions are confined to those locations. After reviewing the bill further, I would defer to committee on whether they believe burglary, on line 27, is essentially covered in subdivision (2). We have an amendment that would strike "burglary." The next subdivision deals with when deadly force is justifiable within a dwelling, a place of business, or an occupied vehicle. It's come to my attention after review that subdivision (4)(a)(ii) may go beyond my intent and may allow a business owner to shoot a person sleeping in a business warehouse that wasn't a threat--clearly not what this bill had in mind. So I believe that oversight should be...could be addressed in several ways. We didn't have time to draft a thorough amendment for this hearing. Moving to subdivision (4)(a)(iii), it deals with essentially kidnapping within the location of a dwelling, place of employment, or occupied vehicle. Subdivision (4) on page 3, lines 8-10, was sort of a catchall provision that I believe would be overly broad and problematic. I have AM577 that would strike that subdivision. You have that in your hand. Next, on page 3, starting on line 11, LB612 describes when deadly force is not justifiable. If you look on page 4, this is where the bill removes the obligation to retreat in most circumstances. Finally, the bill allows for the actor to be wrong in their estimation of danger as long as there is a responsible basis for the belief and they act reasonably in their response. I believe LB612 is a good start by giving Nebraska residents a strong self-protection law that will be easier for them to understand. I will try and answer any questions at this time. Thank you for your consideration. [LB612]

SENATOR SEILER: Senator Chambers. [LB612]

SENATOR CHAMBERS: Senator Kintner, I have only one suggestion. When you spell your name, allow a break because I was just listening to you spell it and you said B-i-l-l-K; that spells "bilk" and that's not what you mean. That's my only suggestion. Break those two apart when you're spelling it. [LB612]

SENATOR KINTNER: Thank you, Senator. [LB612]

SENATOR CHAMBERS: You're welcome. That's all that I have. [LB612]

SENATOR SEILER: Seeing nothing further, are you going to stay for closing? [LB612]

SENATOR KINTNER: Yes, I will. [LB612]

SENATOR SEILER: Okay. First proponent. Proponent. [LB612]

KENT ROBERT: Good afternoon, Senator Seiler, members of the Judiciary Committee. My name is Kent Robert, K-e-n-t R-o-g-e-r-t, and I'm here today on behalf of the National Rifle Association in support of LB612. We thank Senator Kintner for bringing it. It's our policy to support bills that outline the concept in this bill, which strengthens self-defense statutes in all states. I'll answer any questions. [LB612]

SENATOR SEILER: Any questions? Seeing none, thank you. Next proponent. Seeing none, first opponent. [LB612]

AMANDA GAILEY: (Exhibit 3) My name is Amanda Gailey, A-m-a-n-d-a G-a-i-l-e-y. I am speaking against this bill as a representative of Nebraskans Against Gun Violence. Killing another person should be a last resort. Stand your ground inscribes into the law that killing another person need not be a last resort. The American Bar Association conducted a study of the effects of stand-your-ground laws. They found that stand your ground is associated with no decrease in burglary or assault and an increase in homicide. So on a practical level, stand your ground does not work as a measure to reduce crime. In fact, the study recommends that states seeking to reduce crime not enact stand-your-ground legislation. And I hope we can count Nebraska among states seeking to reduce crime. Further, the American Bar Association discovered that stand your ground is not applied consistently and results in racial disparities. Even before a stand-your-ground case gets to a courtroom, the racial disparity of the law is at play. Black people are viewed with more suspicion in public places than are white people. In fact, studies have shown that racial bias can cause people to think a black person is holding a weapon when he is not. Stand your ground empowers biased people in public places to kill someone they believe to be a threat even when safe retreat is an option. In this way, stand your ground emboldens gun carriers and sanctions a vigilante attitude that will necessarily have an oppressive effect on black citizens who know that they are viewed with heightened suspicion and must worry that any misinterpretation of their behavior could result in their authorized murder. American gun culture has grown increasingly virulent in recent years, and it stokes vigilantism by telling gun extremists "it is better to be judged by 12 than carried by 6," which is another way of saying, when in doubt, kill first and let the jury sort it out later. I'd like to make it very clear that the extremism and racialized violence we are talking about here is not an abstraction. A stand-your-ground law in Nebraska will be interpreted by paranoid, armed people in our state as an authorization to use lethal force when none is warranted. In a recent exchange in an on-line

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forum for fans of the Nebraska Firearm Owners Association, someone asked what the legal penalty would be for carrying an unlicensed gun in his car in Omaha. Another Nebraska resident responded that the penalty for not having a gun in Omaha "would be death by hood rat." As the racially loaded language conveys, some people in our state go into public anticipating the need to shoot black people. Bill Kintner would like to tell them to go ahead, he's got the jury covered. I'm happy to answer questions if anybody has any. [LB612]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB612]

AMANDA GAILEY: Thank you. [LB612]

SENATOR SEILER: Next opponent. [LB612]

MELODY VACCARO: Hi, my name is Melody Vaccaro, M-e-l-o-d-y V-a-c-c-a-r-o. I'm a graduate from Papillion-La Vista High School in Senator Kintner's district. My family still lives in Papillion. This law will mean a death sentence in lieu of a trial for many, but especially for African-Americans. If this bill is passed, people of color will be shot and killed in higher numbers. According to research put out by the Urban League, the number of legally justifiable killings after stand-your-ground laws are passed more than doubles. For that same period of time in states who have not enacted a stand-your-ground law, the legally justifiable homicide number actually drops. The following words have been taken from the end of a news story from NPR about a 17-year-old black child named Jesse Washington. His public murder was legally justifiable back in 1916. His punishment did not fit his perceived crime and caused an uproar about injustice across the nation. I've inserted the name of another unarmed 17-year-old black child who was legally murdered 3 years ago, with the anniversary being yesterday. His crime was looking too scary and walking past a scared man in a car who had a gun and the law on his side. Trayvon Martin's killer still owns a gun and has since had multiple interactions with police due to his violent behavior. Trayvon Martin's legally justifiable murder has caused a national uproar of injustice across the nation. And here's an altered quote from that story. The methods used by the justice system of the time also encourage endless speculation about Trayvon Martin's guilt or innocence. In that poisoned climate, it would have been up to Trayvon Martin to prove he was innocent, and Trayvon only had the dimmest understanding of what was going on. For the purposes of this story, however, it makes little difference in the end whether Trayvon Martin was innocent or guilty. Nothing he could have done would have justified what happened to him. Nebraska already protects those who kill in self-defense, as it should. The data shows that if passed, there will be more Nebraskans legally murdered. This bill does not protect anyone but, in fact, endangers us all and especially those who are not white. I am against LB612. [LB612]

SENATOR SEILER: Any questions? Thank you very much for coming. [LB612]

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MELODY VACCARO: Thank you. [LB612]

SENATOR SEILER: Next opponent. [LB612]

COURTNEY LAWTON: (Exhibit 4) My name is Courtney Lawton, C-o-u-r-t-n-e-y L-a-w-t-o-n. Senators and Honorable Chair, I come before you opposed to LB612, the stand-your-ground law. Do I need a gun? I ask myself this when stand your ground becomes the model for what we do when we are scared or intimidated or nervous or angry. I can only predict two things: the proliferation of guns and escalating violence where rule of law is quickly eroded. In an American Bar Association study of stand-your-ground cases in Florida, 60 percent of people claiming they had to stand their ground had been arrested previously. One in three of the shooters had previous arrests for violent offenses. Of course, criminal defense lawyers use the claim of stand your ground more and more. The ABA study found an assertion of stand your ground resulted in zero criminal liability in 70 percent of the cases. How long until the dangerous, trigger-happy men and women who walk among us realize that with only one alive to tell the story, reasonable belief that there may have been a threat becomes an unavoidable conclusion that there was a threat? Do I need a gun? We know criminals get guns and commit violent crimes. Violent offenders are already using stand your ground to justify their criminality. What we don't know is at what point will the rest of us begin to rationalize shooting someone dead as an acceptable response to our problems. For nearly 40 years, the answer to the question do I need gun has been an unequivocal no because I live in America, a nation with a judicial system both criminal and civil where the criminals face trial and conviction. I do not live war-torn failed nation-state where personal safety is in the hands of warlords and mercenary armies. I do not live in a cartel-ridden country where a corrupt government protects the criminals and not its law-abiding citizens. Please respect Nebraska. Honor our legislative and judicial bodies as they do the work our nation's founders set before them. Do not turn our streets into vigilante battlegrounds where violent offenders know full well and good that as long as there's no one left alive to dispute their use of deadly force, they are free to subvert justice and act as self-appointed judge, jury, and executioner. Thank you. [LB612]

SENATOR SEILER: Any questions? Thank you for your testimony. Next opponent. [LB612]

DANIELLE SAVINGTON: My name is Danielle Savington; it's D-a-n-i-e-l-l-e S-a-v-i-n-g-t-o-n. Senators and Honorable Chair, I am a resident of Papillion, the 2nd District of Nebraska. I am also a criminal defense attorney and juvenile court attorney. I come to you today opposed to LB612, the stand-your-ground law. Stand your ground is an expensive solution to a problem that Nebraska does not have. Senator Kintner would tell us that the estimated fiscal impact on state agencies is zero in the adoption of stand-your-ground laws. Respectfully, I submit that that is wrong. Stand your ground places the burden of proof on the state. Unlike self-defense, which is

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an affirmative defense, where the defense attorneys and the defendant are required to prove that self-defense was necessary, stand your ground returns the burden of proof to the state. This has caused prosecutorial budgets in states where stand-your-ground laws are in play to be increased. Stand your ground in Florida and other states has removed the ability of law enforcement officers to arrest shooters when stand-your-ground self-defense claims are raised at the scene because a prosecutorial determination must be made before the arrest. This increases the cost of not only the states' attorneys' offices, but it also leads to an increased cost for law enforcement and increased danger for law enforcement officers. It costs states' attorneys' offices time and manpower to review these cases before issuing charges to determine whether the charges will withstand scrutiny during immunity hearings. For police in cases where the charges are deemed valid, they must now track down shooters who are in the wind or gone to ground. This is costly in terms of manpower and dangerous because it causes the police to have to apprehend shooters who have already demonstrated the capacity to kill and their ownership of firearms. Prosecutors will now have to try a case twice, both at the immunity hearing and the final trial. The cost of trials are already crushing. Doubling them is going to cost Nebraska money. Senator Kintner is concerned about the cost of civil litigation facing shooters who are cleared of wrongdoing in self-defense cases. But the number of these potential cases is nowhere near the cost to Nebraska, both in terms of dollars and human capital. The state of Nebraska, its people, we cannot afford to foot the bill that stand your ground creates. I ask you to consider the problems that we face as Nebraskans and realize that the need for stand your ground when safe retreat is available is just not a problem that we face. Thank you. [LB612]

SENATOR SEILER: Questions? Thank you very much for coming and your testimony. [LB612]

DANIELLE SAVINGTON: Thank you. [LB612]

SENATOR SEILER: Next person in opposition. Seeing none, neutral, anybody in the neutral? (Exhibit 1) Seeing none, I will include all the written materials in the transcript. And, Senator Kintner, you may close. [LB612]

SENATOR KINTNER: I waive off. Have a good weekend, everybody. [LB612]

SENATOR CHAMBERS: Ditto. [LB612]

SENATOR WILLIAMS: How did you do that so fast? [LB612]

SENATOR SEILER: Senator Kintner has waived closing on LB612. We will now open with Senator Campbell opening on LB302. Go ahead. [LB612]

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SENATOR CAMPBELL: Thank you and good afternoon, Chairman Seiler and members of the Judiciary Committee. I am Senator Kathy Campbell, K-a-t-h-y C-a-m-p-b-e-l-l, representing the 25th Legislative District. I am here to introduce LB302 dealing with rehoming of children. LB302 creates the offense of rehoming a child. Rehoming is essentially selling an adopted child, which these days happens over the Internet. This is a phenomenon I recently learned about from the Inspector General for Child Welfare. While I am not aware of any documented cases in Nebraska, area attorneys have been approached to provide legal services in such instances but have declined based on ethical considerations. The practice seems to target children who were adopted but then the family decides they no longer wish to parent the child either because of health or behavioral issues or for more devious and disturbing reasons. As Chair of the Health and Human Services Committee, I have heard too many horror stories and statistics of the trauma faced by children in our child welfare system. But we cannot be ignorant to the fact that these terrible and, I believe, criminal activities are taking place in other parts of our country. As of September of 2014, at least five states have passed laws making rehoming a crime. While the problem seems focused on adopted children, LB302 addresses the private sale without any court involvement or official procedure of any child. Overwhelming evidence exists on the trauma a child faces when being moved from home to home. And this Legislature has put in considerable effort through the past four years of child welfare reform to reduce state-caused trauma and ensure Nebraska's children's safety and permanency in a home. But there is nothing in Nebraska law regarding the rehoming of a child in this way. If the offense does not rise to the level of child abuse or human trafficking, there does not appear to be a legal remedy. LB302 makes rehoming a child a fourth degree felony. I understand there is a concern over creating new crimes, especially when our prison system is already overcrowded. However, I do believe selling children rises to the level of a felony in order to ensure the protection of our children from those who want to do harm. Colleagues, I just want to make a couple of comments to you before we take some of the testimony. You have a letter from the Inspector General and she will be here to answer any questions if you have them. I have indicated to Chairman Seiler that I would like the bill held. What the Inspector General and I decided to do was to introduce the bill and take testimony today. And there will be people, I'm sure, who will testify opposed to the bill. But one of them has already stepped forward and said, here's my card and I'd be glad to sit down with you. And that's really what we're trying to do, is to find out because some of...and I'm not an attorney. But there are some questions I think that arise is, how does this fit with our adoption statutes, our child endangerment statutes, guardianship? And I know the Inspector General has several places that she would like to look at. So we wanted to at least provide a message, a very clear message that we do not wish to see rehoming be a part and happen in Nebraska and that we are going to work on it. And as we develop an amendment, Chairman, we will be back with you. And we appreciate your patience in at least opening the discussion on this and hearing the testimony. And with that, I would conclude and take any questions. [LB302]

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SENATOR SEILER: Do you anticipate this being in this session or start of next session?
[LB302]

SENATOR CAMPBELL: You know, I was asked by Senator Coash. Basically, we had a discussion. I'm not sure, Senator Seiler. My thinking would be that probably is going to be next session because I do want to take some time to talk to the people, and particularly the people who will testify today. [LB302]

SENATOR SEILER: We'll take the testimony today and we'll hold the bill until you tell us that you're ready to move... [LB302]

SENATOR CAMPBELL: That would be excellent. Thank you. And I'd be glad to answer any questions. [LB302]

SENATOR SEILER: ...unless there's an objection from anybody on the committee. Seeing none... [LB302]

SENATOR PANSING BROOKS: I just have a question. [LB302]

SENATOR SEILER: Pardon? [LB302]

SENATOR PANSING BROOKS: I have a question. [LB302]

SENATOR SEILER: Okay. Yes, I'll get to that in a second. [LB302]

SENATOR PANSING BROOKS: Oh, okay. Sorry. [LB302]

SENATOR SEILER: So we'll follow that procedure. [LB302]

SENATOR CAMPBELL: Okay. [LB302]

SENATOR SEILER: And now, any questions regarding this bill for the senator? Yes, Senator Pansing Brooks. [LB302]

SENATOR PANSING BROOKS: Thank you, Senator Seiler. Senator Campbell, thank you for bringing this bill. I think it's important. I'm also working with the Attorney General on some

human trafficking work. And so this fits very nicely with that. I guess my initial reaction is on line 23, page 2, I just...I'm interested in that specific intent to return. And I just...I'd be...I hope somebody will look at that who knows a lot more than I do. And maybe you have a reason why it was exactly put in. But I think I'm concerned about how that intent would be shown, whether that creates too broad a standard. Oh, I really did intend to return for this child. And we know what types of things could be done with that child while the child is in the other person's custody. So I just...I hope that maybe people could either speak to that or think about that or know whether or not some...I know that there are sexual trafficking laws being created across the country by the Uniform Law Commission and others. And so I don't know if that intent language is completely necessary. So I just wanted to bring that out to your attention. [LB302]

SENATOR CAMPBELL: Okay, we do mention...in the next line we do mention the hospitalization. But there have been cases in which a family member has a very, very serious illness or a behavioral health issue that needs to be addressed and will be away for an extended period of time. But clearly that parent is going to come back and be with the child. But we'll take a look at it if it needs a better definition. And we would really like to work with you if there's any information that we need to have to share and make sure we've got the best legislation coming forward. [LB302]

SENATOR SEILER: I've had a number of businesspeople that come and draft powers of attorney for quite a long time when they are being transferred overseas but their children want to stay here and finish school. Any other questions? Seeing none, thank you. You'll stay because you've got the next bill. [LB302]

SENATOR CAMPBELL: I will be here. Thank you. [LB302]

SENATOR SEILER: Thank you. Any testimony for the proponent, in favor of? You may proceed. [LB302]

CORTNEY SCHLUETER: (Exhibits 5 and 6) Okay. Hello. My name is Cortney Schlueter, C-o-r-t-n-e-y S-c-h-l-u-e-t-e-r. I'm the Right Turn director. Right Turn is a collaboration between Lutheran Family Services of Nebraska, Nebraska Children's Home Society. I testify on behalf of all three agencies. Right Turn was established in response to the 2008 safe haven crisis. Right Turn began offering a continuum of needed supports and services to adoptive and guardianship families and is now a leader in the U.S. in adoption support. The majority of adoptive parents are committed and do all they can to keep their children safe and help them heal. Adoption is a protective factor, but it does not mend abuse, neglect, loss, prenatal drug and alcohol exposure, mental health, and other challenges. From the moment a family considers adopting, they need appropriate training, assessment, preparation and ongoing support. The primary goal of Right

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Turn is to provide adoptive families with the supports and services necessary to be able to maintain their forever parenting commitment. Ninety-nine percent of the families who have engaged in one-on-one support services with Right Turn have remained intact. Right Turn's 1 percent dissolution rate compares to a national average of between 1 percent and 25 percent. When adoption disruption occurs, it is a tragedy for the child and for the entire family. The trauma and loss a child has already experienced is compounded exponentially, risk factors increase, and outcomes for the child are severely diminished. No child should ever have to lose one set of forever parents, let alone two sets of forever parents. Forever becomes meaningless. Rehoming, a practice increasing in popularity, is much worse for a child than a disrupted adoption. In rehoming, there are no rules and no regulation. Potential parents do not undergo background checks, home studies, training, and other critical measures taken by licensed child-placing agencies to find safe homes for children. These children are a heightened vulnerable population and laws to protect them are imperative. Rehoming is either an easy way out of a commitment for poor-intentioned parents, or a last resort for desperate parents who did not receive the appropriate preparation and who lack ongoing support. Effective December 1, Right Turn can now offer supports and services to all of Nebraska's adoptive families to include international, domestic, and foster adoptive families...adoptions in Nebraska disrupt. Nebraska is not immune to rehoming either. In our effort to support families and maintaining their parenting commitment, families often consider disruption and more recently have explored rehoming. While Right Turn and others continue to work to fill in gaps and barriers that contribute to a parent's inability to maintain their parenting commitment, when this does happen, the law needs to protect these vulnerable children from unregulated custody transfers or rehoming. At the very minimum these children should be given a second chance and return to a system with oversight and regulation versus a system where children are abandoned and have no protection. To quote John Simmons, an adoptive parent, when our laws allow a parent to turn over their child to a stranger with less paperwork and legal work than it takes to dispose of a car that doesn't have a title, then something is broken and needs to be fixed. Rehoming is comparable to human trafficking. Many other states have passed laws to prevent and prosecute this practice, and now it's time for Nebraska. [LB302]

SENATOR SEILER: Thank you. Any questions? Thank you very much for your testimony. Next proponent. [LB302]

ERIN BADER: (Exhibit 7) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Erin, E-r-i-n, Bader, B-a-d-e-r. I am the permanency services supervisor at Lutheran Family Services of Nebraska, and I'm here to testify in support of LB302. Since 1892, Lutheran Family Services of Nebraska has served children and families. What began as orphanages in Fremont and Omaha has become a statewide outpouring of God's love through dozens of programs, 350 staff members, and numerous volunteers. LFS permanency staff are well trained in adoption best practices and do everything we can to ensure the success of each

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adoptive placement, whether it is an infant adoption, kinship adoption, international adoption, or foster care adoption. We understand that a successful adoption requires appropriate training, assessment, preparation, and ongoing support. Adoption is a lifetime commitment. When an adoption disruption occurs, it is a tragedy for the child and for the entire family. The trauma and loss the child has already experienced is compounded exponentially, risk factors increase, and outcomes for the child are severely diminished. Rehoming, a term becoming increasingly familiar, is when adoptive parents decide to disrupt their adoption and find new adoptive parents or guardians for their child. Parents who choose to rehome often do so because they feel they are unable to parent or manage their child's behaviors. Ideally, these parents would seek postadoption support services when feeling overwhelmed. We are lucky to have a strong postadoption program in our own state, Right Turn, which provides support services to all families created through adoption. Unfortunately, there are many adoptive parents who do not seek help and instead choose to find their own way to place their child elsewhere. In these situations, adoptive parents do not follow the proper channels or utilize a licensed adoption agency or attorney to create a new plan for the child, which results in children being placed in potentially dangerous and harmful stations. LB302 would implement protections for these children. Please support LB302 so that adopted children do not need to be retraumatized and rehoming a child becomes a criminal offense. Thank you. [LB302]

SENATOR SEILER: Any questions? I have one. [LB302]

ERIN BADER: Sure. [LB302]

SENATOR SEILER: Do you keep any statistics on how many rehoming that have occurred under your jurisdiction? [LB302]

ERIN BADER: We don't. And I have not been familiar of any specific instances of rehoming thus far. We hope that all families who adopt through us will come to us for support instead of choosing that route. [LB302]

SENATOR SEILER: That's fine. That's what I wanted to know. Thank you. Any further questions? Seeing none, thank you very much. [LB302]

ERIN BADER: Thank you. [LB302]

SENATOR SEILER: Further proponent. Anybody in the opponent? [LB302]

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SUSAN SAPP: Good afternoon, Senator Seiler and committee members. My name is Susan Sapp, S-u-s-a-n S-a-p-p. I'm a senior litigation partner at Cline Williams law firm in Lincoln and Omaha. I've been an attorney in private practice for more than 25 years in Nebraska and Iowa. About 30 percent of my practice is private and agency adoption related. Primarily I represent birth parents who are making a difficult decision to do an adoptive placement. I'm also a member of the American Academy of Adoption Attorneys, and I'm one of two attorneys in this state qualified to be part of that academy. Kelly Tollefsen is with me as well, and she is the other attorney in the state. I've also been the principal drafter of six or seven adoption...pieces of adoption legislation since 1995 that have been enacted into law. I'm here on behalf of my clients, my birth parent clients who are facing adoption decisions. I oppose human trafficking, child abuse, child neglect, child selling in any form, anywhere, no question. I hear the problem that folks are calling rehoming today. I am unaware of any cases, Senator Seiler, in Nebraska where there has been an attempt by adoptive parents to sell a child or inappropriately place their child with someone else. The unintended consequences of this bill are enormous and devastating to adoption law in Nebraska and bad for kids, bad for families. It makes it a felony for my clients as birth parents to make a private adoption plan. It's not limited to readoption situations. This bill is broad enough that it covers any parent, biological or otherwise, from making a newborn placement with families of their choosing who have been home studied by agency, by law. And it would make their exercise of their right a felony to find a fit, suitable, home-studied family to do a private placement adoption with. It also threatens the ability to reimburse a birth mother for pregnancy-related expenses that are allowed under Gray v. Maxwell. It also addresses adoption disruption, but it requires state involvement or return of the child to an agency to deal with an adoptive disruption. I had clients who adopted a child from a foreign country. The child came here and perpetrated a sexual assault on another child in the home. I can't believe that there are clients who needed an attorney more than those folks did in that difficult situation. LB302 prohibits the involvement of an attorney in adoption disruption placements. We are not on the list of people who are allowed to be involved in dealing with adoption disruption or private adoption at all. The fourth problem is that it would make felons out of people who, like, Senator Seiler, you mentioned, made POAs to have a child to come live with them for a variety of reasons. We have a child who's lived with us for five years since he was 15 years old whose mother died and his father was a heroin addict in Chicago and he did not know him. He had an elderly grandmother who couldn't care for him. He came and lived with us. He is my child in all regards. He's now almost 21 years old, in his third year of college. He had a 1.7 GPA when he came to live with us. People tell us we did a great thing. We tell them we were blessed by the addition of that child into our home. This would make me a felon in that situation. [LB302]

SENATOR SEILER: You have a red light, so just a second. [LB302]

SUSAN SAPP: Thank you. [LB302]

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SENATOR SEILER: Anybody? Senator Williams. [LB302]

SENATOR WILLIAMS: If you'd like to go ahead with your testimony, I'm interested in hearing the balance of it. [LB302]

SUSAN SAPP: Thank you, Your Honor...thank you, Senator. (Laughter) [LB302]

SENATOR WILLIAMS: Wow. It's Friday. [LB302]

SENATOR SEILER: You just elevated him. [LB302]

SUSAN SAPP: I did. I gave him a raise. [LB302]

SENATOR MORFELD: I have to sit next to him in the Chamber. Don't get his ego too high here. [LB302]

SENATOR WILLIAMS: Just so Senator Chambers didn't hear that, or maybe he did. (Laughter) [LB302]

SENATOR CHAMBERS: Yes, I did. [LB302]

SUSAN SAPP: I think he did. I think he did. There would be a variety of reasons that would require parents to indefinitely place their child in the care of another responsible adult. Our situation was unique and it would make us felons for having added this child to our family because he needed parents and we were available. It would make a felony for a family to place their child at Boys Town, not in the Boys Town hospital but in the Boys Town school program. It would make it make it a felony to place a child at Villa Marie. It would make it a felony to place a child in a reactive attachment disorder special private program for treatment. So life happens, and there are a variety of reasons that a child would need to go live somewhere else with responsible adults or in a program. And this would make it a felony. So I'm the person that handed my card to Kathy Campbell, Senator Campbell before this hearing. I'm happy to help be part of a study to address a problem if we have one. But I'm not sure that rehoming is a problem in Nebraska. And I think we can come up with other ways other than creating another classification of crime to deal with it. So I will be part of a solution. [LB302]

SENATOR SEILER: Thank you. Any questions? [LB302]

SUSAN SAPP: Thank you. [LB302]

SENATOR SEILER: Thank you very much. Any further opponents? [LB302]

KELLY TOLLEFSEN: Senator Seiler, I'm Kelly Tollefsen, K-e-l-l-y T-o-l-l-e-f-s-e-n. I'm with Kelly Tollefsen Law Offices. I'm an adoption attorney. I've been practicing adoption law for 15 years. As Susan Sapp said, I'm also a member of the American Academy of Adoption Attorneys, and I would tell you that about 70 percent of my practice is adoption law right now. I find that this bill is problematic in that it's overly burdensome and overly broad. As Susan stated and I would just reiterate her testimony, I couldn't do it as well as she did, but I would tell you that this bill applies...it would make it a felony for a private practice attorney to place a child. In my private experience as an attorney, I've never had a family contact me in 15 years saying, we need to do something with a child, we're going to sell this child to somebody, can you help us do that? I have had one experience where I've a child that had attachment disorder adopted from another country, came into a home here with other children, was not able to bond well with those children, and some problems developed. After I did the finalization of the adoption all those problems occurred. That family then contacted me again afterward and said, we found another family, they're home-study approved, we would like to place this child in that family. And I in turn assisted them in being able to place that child with that family that was, again, home-study approved because we can't place a child into a second family unless that family has in fact passed all the background checks, central registry checks, criminal history background checks, and have been visited in their home by a licensed agency. In that case, that child, while it was unfortunate that they were not able to stay in the home that they were in, it did not have to involve the juvenile court jurisdiction. And it also did not have to involve an agency. The parties were able to contact me and we were able to safely place that child into a home where he was able to flourish in. This bill would restrict a birth mother's choice to use a private attorney instead of an adoption agency. I have many birth mothers that contact me that want to use a private attorney instead of an agency for whatever reason they have. I just had one that gave birth. None of her family knew about it. Her children didn't know about it. She didn't want anybody to know about it. Her alternative if she couldn't use a private attorney was going to be just to leave the child in the hospital under the safe harbor act. Those don't create as secure of a placement as a private attorney adoption could create in that sort of a situation. In that situation, I was able to go out there and help her. Under this bill I would not be able to go out and help her. That child would have been left in the hospital. Had I gone out there, I would have been committing a felony because I would have been conspiring to place that child in a home. Furthermore, we don't have very many laws and statutes on what birth mother's...we have no laws and statutes on what expenses can be paid other than the Gray v. Maxwell case. And with the gray area, we know we can pay some birth mother expenses that are birthing related. But this would make it a felony for adoptive families to pay something. [LB302]

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SENATOR SEILER: Ma'am, you've hit the red light. I'd entertain a motion. [LB302]

SENATOR PANSING BROOKS: Yeah. Please go ahead, Ms. Tollefsen. [LB302]

KELLY TOLLEFSEN: Oh, okay. With respect to the expenses, if adoptive families would be very concerned on whether or not this is concerned a birthing-relating expense, we have one case in Nebraska that says we can only pay birthing-related expenses. We're not sure what those are. Sometimes it becomes a gray area. It could be very detrimental. And in fact, if I were an adoptive family, I would very concerned about adopting out of Nebraska because there's a potential if they paid for maternity clothes or gas expenses, are those considered birthing expense? Or are they going to be found guilty of a felony for paying something that they shouldn't have? And this bill would in fact make that a felony. [LB302]

SENATOR SEILER: Anything further? [LB302]

KELLY TOLLEFSEN: The only thing further is, you know, I guess we have to remember that prior to a child being placed for adoption they do have to be placed in a home with a home study. And that is through a licensed Nebraska social worker. [LB302]

SENATOR SEILER: Yes, Senator Pansing Brooks. [LB302]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Ms. Tollefan (phonetically), I was just...did I mispronounce your name? [LB302]

KELLY TOLLEFSEN: Tollefsen. That's fine, Senator. [LB302]

SENATOR PANSING BROOKS: Tollefsen. I'm sorry. I was just trying to...clearly I don't believe that Senator Campbell is trying to inhibit the proper and legal adoption of children. So I think we're all clear that that was not her intent. And so I think the goal is we are trying to learn more and more about human children and sexual trafficking. And even the Attorney General's Office is on alert about this. And so I'm hoping that you both...I think Ms. Sapp also mentioned that she's willing to work with Senator Campbell's office. But there would be ways to draft and construct the language to be more tightly written to be able to just deal with the issue that Senator Campbell is currently concerned about. I do have some concern about the fact that we have...there are some things that are able to be done without much oversight on a child. Now obviously if you're going to court and doing all sorts of things, that's a different matter. But it just seems like...I'm hoping that you'll also help out Senator Campbell's office. [LB302]

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KELLY TOLLEFSEN: I will, Senator. Yep. I would be very happy to do that. [LB302]

SENATOR PANSING BROOKS: Thank you very much. [LB302]

KELLY TOLLEFSEN: Thank you. Any further questions? [LB302]

SENATOR SEILER: Any further questions? Thank you very much for your testimony. [LB302]

KELLY TOLLEFSEN: Thank you. [LB302]

SENATOR SEILER: Any further opposition? Seeing none, anybody in the neutral? [LB302]

JULIE ROGERS: (Exhibit 4) Good afternoon. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s. I'm the Inspector General of Nebraska Child Welfare. Under the Office of the Inspector General of Nebraska Child Welfare Act, it requires that any issues that my office finds that I communicate those with the Chair of the Health and Human Services Committee, which is Senator Campbell. This rehoming issue came to my attention and I communicated the issue with her. And I also want for the record to be that we have not received any complaints in our office about rehoming specifically in Nebraska. Instead, we have gotten many complaints and scenarios that are devastating to families that go through interrupted adoptions, especially...none that have gone through private attorneys but those that have gone through the child welfare system. And with that, I would take any questions. [LB302]

SENATOR SEILER: Any questions? Thank you very much. [LB302]

JULIE ROGERS: Thanks. [LB302]

MANDY GRUHLKEY: Hello, Senator, members of the Judiciary Committee. My name is Mandy Gruhlkey, M-a-n-d-y G-r-u-h-l-k-e-y. I am a public defender in Sarpy County, and I'm here on behalf of the Nebraska Criminal Defense Attorneys Association. We are here today to testify in the neutral position since this bill is kind of in a holding pattern now waiting to be amended. I did speak with Senator Campbell just a few seconds ago and did volunteer to also help with the language. That's the concern of the NCDAA is the language of this bill, that it's very vague and overbroad. Certain instances where it talks about permanently avoiding parental responsibility, it talks about certain people that...let's see, in Section 2(2)(a) where it talks about rehoming, it leaves out...it talks about family members, but then it doesn't really give a good definition of family members such as...and one of the issues that I saw when I read this bill initially, because of the vagueness of it, was my own personal story. I was rehomed by definition

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of this bill. As a child, my parents both had substantial substance abuse issues. And I was placed with a family friend for an indefinite amount of time. It wasn't necessarily permanent, although I didn't know when I would be living with my family members again. They did this so that I wouldn't become a ward of the state, so that I would get the care and the support of a loving environment with people that I knew. And what I fear is that people that would be in my...children that would be in my situation would be further traumatized if their parents were to face a felony. And then also there's really no discussion about the collateral consequences to children that find themselves in this situation. Are we going to be removing from the home that they were rehomed? And I'm also an attorney in the juvenile court and I realize the constant movement of children causes so much trauma. So that's just some of our concerns with the bill. So we would again, just want to be able to help with the amendment stage. [LB302]

SENATOR SEILER: Any questions? Thank you very much. [LB302]

MANDY GRUHLKEY: Thank you for your time. [LB302]

SENATOR SEILER: Any further in the neutral? (Exhibits 1-3) The records will be supplemented by the written materials. And Senator Campbell, she waives her closing. That concludes the hearing on LB302. Senator Campbell, you can open on LB265. [LB302]

SENATOR CAMPBELL: (Exhibit 2) Thank you, Chairman Seiler and members of the Judiciary Committee. I'm Kathy Campbell, K-a-t-h-y C-a-m-p-b-e-l-l, representing District 25 here to introduce LB265. I should say that I'm sure you've already had some introduction to LB265 because Senator Krist and I both had bills dealing with the same subject, both from guardians ad litem and the Foster Care Review Office and the Inspector General. So we decided that Senator Krist would take everything having to do with guardians ad litem and I would take the others. This bill is about the well-being of children and juveniles and out-of-home placement. It is intended to allow two key child welfare offices to have information about those children and juveniles. The green copy of the bill generated discussions with the court and the judiciary side. And those discussions led me to ask for a white-copy amendment to LB265 which the page distributed to you, and you also would have...we sent it electronically to you. My comments will address the white copy which is AM545. I have provided that to the court, but I want to hasten to add that I do not know the court's view of it. But we did want to make them aware of it. And there has been a great amount of discussion this week with the judiciary branch. Please note that the green copy of LB265 contained provisions, as I indicated, on guardians ad litem. Those provisions have been removed from the white copy, so I will not be addressing anything having to do with guardians ad litem. I heard you had a very long hearing yesterday. [LB265]

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SENATOR SEILER: Okay. So just for the record, AM545 to LB265 totally replaces the green copy. [LB265]

SENATOR CAMPBELL: Correct, correct. [LB265]

SENATOR SEILER: Thank you. [LB265]

SENATOR CAMPBELL: It does. Thank you, Chairman Seiler. I introduced LB265 at the request of the Inspector General of Child Welfare and the Director of the Foster Care Review Office. Both of these state officers are required by statute to keep track of all children and juveniles in out-of-home placement. However, with the passage of LB464 in 2013, information on juveniles in out-of-home placement moved from the Department of Health and Human Services to the courts. And that was the movement to Probation. As a result, access to that information by these state officers is available only through a court order. As originally drafted, LB265 would have allowed access through data sharing, and those portions of LB265 are not a part of the amendment. So the concerns expressed by the court and the judiciary have been addressed, we hope, in this amendment. Instead, AM545 requires a pilot project under the supervision of an advisory group to look at the child welfare data systems already in place in state government and to consider whether one system might be built upon to create a data warehouse on children and juveniles in out-of-home care. AM545 places the pilot project within the Foster Care Review Office, but places the project under the supervision of an advisory group. And the advisory group is outlined in the amendment and is really fairly broad between the child welfare side and the Probation side, which we think is very good, has representatives from DHHS, the Crime Commission, the University of Nebraska, the Chief Information Officer of the State, and the Foster Care Review Office, Commissioner of Education, and of course, the Inspector General. The advisory group is given guidelines on what to consider including the issue that all of us have in mind when we think about data systems, and that is the protection of confidential information and restrictions. There's been so much discussion, colleagues, on data systems and what we can learn from them and has been a great topic of the Children's Commission, of which Senator Coash and I have been active members on and we've heard quite a bit about that. AM545 makes changes to existing statutes as regard to the Inspector General and the Foster Care Review Office. And I'm going to hit those because that's really what's in this amendment. It authorizes release of videotapes used in abuse or assault investigations pursuant to an investigation under the Office of the Inspector General of Nebraska Child Welfare Act. And that's a part of the existing section that we worked out in all the child welfare bills. Admitting into evidence written findings or recommendations of the Foster Care Review Office in proceedings concerning a juvenile. Allowing the Foster Care Review Office or local review board to participate in proceedings concerning juveniles placed in foster care. Providing immunity from civil liability for employees of the Foster Care Review Office and members of the local boards who participate in investigations or make reports or proceedings in a judicial

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proceeding under Section 43-297.01. Providing that the court may disseminate individual confidential record information to the Inspector General of Child Welfare and the Foster Care Review Office and providing that this section does not prevent the court from notifying the Inspector General of Child Welfare of death or serious injury of a juvenile. And I think the court would probably do that, but it clarifies that they may do that if they wish. Defining trial home visit for court-involved juveniles, and this has been a point that the Health and Human Services Committee has wanted. And that would allow...the Foster Care Review Office pretty much follows placements in out-of-home care. But in a trial home, a child still remains a ward of the court but is at home for a period of time of trial. And what the Health and Human Services Committee has wanted is for the Foster Care Review Office to follow during that period of time because we are very concerned about the number of children that are in out-of-home placement, go home, and then are taken out again. And that is a system that we in the Health and Human Services Committee want to stop; it's those multiple in-out placements of children. Requiring the Foster Care Review Office to share certain information with the Office of Probation, and you'll see that a number of times in the amendment because we want to make sure they get that information. Striking a requirement that the Health and Human Services Committee provide names to the Governor for his or her selection of appointees to the Foster Care Advisory Committee. We did that for the establishment, but then we want to revert to the typical now where the Governor receives names and appoints. Changing from monthly to weekly the report that the Foster Care Review Office must make regarding the statewide register of all foster care placements, we think that's very important for the court to know. Requiring to Office of Probation Administration to report placements within three working days to the Foster Care Review Office, that's pretty standard practice. Changing the information required to be included in the weekly report. Allowing the Foster Care Review Office to adopt rules and regulations as to the accumulation of that data that we talked about, to perform case file reviews and data analysis at the request of any state agency. So we want to make sure that the information that the Foster Care Review Office has. Exempting from the Open Meetings Act locals boards' meeting discussions of mental and behavioral health services for children. We think that if you're talking about a particular child and their health and their behavioral health, that ought to be exempt because to protect the child. Clarifying that the Inspector General of Child Welfare is not required to investigate death or serious injury if such are determined to have occurred by chance. And we strike a lot of obsolete language in the bill. My goal in bringing you AM545 is to move all branches of government toward agreement on how our responsibilities for children and juveniles can be met while also respecting each other, each branch's independence. Thank you, Mr. Chairman. A tremendous amount of work on this amendment has gone on by Claudia Lindley, my legislative aide, who was sort of ferrying back between all the different parties. So we hope that we have the view. And we will double check, Chairman Seiler, with the court system once again and get back to you if there's any other amendments that need to be made. [LB265]

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SENATOR SEILER: Okay. Questions? [LB265]

SENATOR PANSING BROOKS: Thank you, Senator Seiler. Thank you, Senator Campbell, for bringing this. Also, so is the out-of-home data pilot project, Senator Campbell, something you're also talking about? [LB265]

SENATOR CAMPBELL: Yes. [LB265]

SENATOR PANSING BROOKS: Okay. I guess what I think I'm...I think that this sounds good. We had very interesting information earlier this week on something called the central registry. And I guess what I'm concerned about is I'm looking at the information that Health and Human Services can put...or that the Foster Care Review Office can put into the record. And many of the findings are name, date, and stepparents and things like that. But it also talks about the court proceedings. And I'm not finding the right page on this now. Sorry. So I'm guess I'm concerned now that I'm hearing that there is an ability for there to be administrative...what was that? Administrative... [LB265]

SENATOR COASH: Agency substantiated. [LB265]

SENATOR PANSING BROOKS: Yeah, agency-substantiated findings that can just be placed out there, that's what worrying me. So is there...are we for sure going to be able to protect that information for that juvenile? [LB265]

SENATOR CAMPBELL: I think the central registry is a very different... [LB265]

SENATOR PANSING BROOKS: I just didn't know where it's... [LB265]

SENATOR CAMPBELL: ...very different from the central registry. For new senators, the Foster Care Review Office is a name that we changed, that used to be the Foster Care Review Board. [LB265]

SENATOR PANSING BROOKS: Okay. [LB265]

SENATOR CAMPBELL: And the Foster Care Review Board was established, essentially put in legislation I believe by Senator Dave Landis. So it's been around for many years. And it was meant...as senators stood up on the floor of the Legislature and said, tell me where the kids are. And the Legislature said, we don't know where the kids are, they're in out-of-home placement,

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no one is tracking them, no one is paying attention, we want that information and we want it made it available to the Legislature, we want as a duty of our oversight. And so the Foster Care Review Board was established. And now, what, several years ago, Senator Coash, what, two years ago, three years ago? [LB265]

SENATOR COASH: Um-hum. [LB265]

SENATOR CAMPBELL: We changed the name of it and made some...brought it up to date. And so Kim Hawekotte is here today and will testify. And most likely, she'll hit directly on your question because I'd like her to explain it to you. [LB265]

SENATOR PANSING BROOKS: Okay. I do understand the central registry is something different. But I'm concerned because I see information that's being gathered and it could be detrimental as the child becomes an adult later on. [LB265]

SENATOR CAMPBELL: Sure. [LB265]

SENATOR PANSING BROOKS: So I just want to make sure that we are now aware that this might happen sometime. [LB265]

SENATOR CAMPBELL: Okay. [LB265]

SENATOR PANSING BROOKS: Thank you very much. [LB265]

SENATOR SEILER: I have no further questions. You going to stick around? [LB265]

SENATOR CAMPBELL: Thank you. I will. [LB265]

SENATOR SEILER: Okay. First proponent. [LB265]

JULIE ROGERS: (Exhibit 3) Good afternoon. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s. I'm the Inspector General of Nebraska Child Welfare. The Office of the Inspector General of Nebraska Child Welfare Act was enacted during the 2012 Legislative Session and has been in operation since the summer of 2012. We take complaints about the system and investigate death and serious injury of children in the child welfare system. During the 2013 Legislative Session, LB561 added language requiring us to investigate death and serious injury of youth while in private entities under contract with Probation Administration. Since both those sessions, there

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have been situations that have arisen pertaining to conflicting language within other parts of our statutes that this bill makes clear. The bill clarifies that child advocacy centers may: release forensic interviews and information to our office; when our office is conducting a death or serious injury of a juvenile probationer under the act, when Probation may release information to us; that we may be identified by a court as an entity that may receive confidential information as set forth by the court; and if a child in the welfare system dies or is seriously injured by chance, we're not obligated to investigate. These provisions in LB265 will enhance the work of our office by ensuring that we can do our work thoroughly, more efficiently, and as the intent of the act sets forth. Thank you. [LB265]

SENATOR SEILER: I have a question. [LB265]

JULIE ROGERS: Yes. [LB265]

SENATOR SEILER: How do you, or do you, get around the HIPAA laws for your investigation? [LB265]

JULIE ROGERS: In the act it gives our office...we have access to all the information. And the act lets us do so through Health and Human Services. Our reports... [LB265]

SENATOR SEILER: Yeah, but HIPAA is a federal law. [LB265]

JULIE ROGERS: Yes, I know. I know. [LB265]

SENATOR SEILER: (Inaudible) [LB265]

JULIE ROGERS: And it has not come up. [LB265]

SENATOR SEILER: Okay. Thank you. Senator. [LB265]

SENATOR COASH: Thank you, Senator Seiler. General, do you get stonewalled sometimes when you're investigating complaints? And what I mean by stonewalled, do you sometimes come across barriers to getting the information you need to thoroughly investigate what you're...? [LB265]

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JULIE ROGERS: I have. And I don't know that it's stonewalling or defensiveness. We've had one death that's happened of a juvenile probationer, and it has been difficult to get information in a timely manner. [LB265]

SENATOR COASH: And are the entities that are kind of putting up barriers to the information you want saying, hey, you're an HHS watchdog and we're under the courts, so you don't have...we're not responsible to give you any information because we're the court... [LB265]

JULIE ROGERS: Well, right, because we are in separate branch of government, there are constitutional issues. That's the reason. [LB265]

SENATOR COASH: Right. Does this amendment break that barrier down by allowing your office to get into the probationers, a little bit less barrier? [LB265]

JULIE ROGERS: It allows Probation to tell us when there's a death or serious injury without getting a court order so quickly. Like for example, we know about a death if it's in the Omaha World-Herald, for example. But if they're waiting for a court order to tell us, I mean, it's public information first. So it helps with that. We still need to get court orders for any other documentation to do our investigation. [LB265]

SENATOR COASH: So when you need that, you have to put a motion into the court and say, here's some information we need? [LB265]

JULIE ROGERS: The way we have worked it out with Probation is that they will work with their local probation office to get the court order signed for what we need. [LB265]

SENATOR COASH: Is there a way around this court order, or is that just the way we have to do it because it is a...? [LB265]

JULIE ROGERS: That's what we...that's what the original bill tried to do. Over the last year, I've been trying to work with Probation on this issue because they want to be transparent and open to these investigations. They have talked about, during the 2013 Session that changed our act, to look at these issues, the legislation did not go into their statutes to give us permission. So I think that's the intent of this bill, is to give us permission explicitly within their statutes to share this information. [LB265]

SENATOR COASH: So we're permitting you as Probation...I'm trying to get at, will Probation continue to try to throw up a different barrier that's not addressed in this amendment? [LB265]

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JULIE ROGERS: I hope not. [LB265]

SENATOR COASH: Could they? [LB265]

JULIE ROGERS: I mean we are working...I suppose they could. We are working, we have been diligently working together to try and solve some of these issues. So far we have not gotten there, but I'm hopeful that we will be able to. [LB265]

SENATOR COASH: Okay. All right. Thank you. [LB265]

SENATOR SEILER: Any further questions? Senator. [LB265]

SENATOR PANSING BROOKS: I guess I'm still worried about the information that's being gathered and whether or not it will become sealed at some point... [LB265]

JULIE ROGERS: Okay. [LB265]

SENATOR PANSING BROOKS: ...for those foster children. [LB265]

JULIE ROGERS: And I can only speak to our office. [LB265]

SENATOR PANSING BROOKS: Okay. [LB265]

JULIE ROGERS: In the act, it sets forth that our reports are not...we are not open to public meetings. We're not open to the sunshine law. I'm going to lose the words. Our reports cannot be used in any court of law. They are only to improve the system. And I can consult with the Ombudsman to decide whether a report can be shared with the Chair of the Health and Human Services Committee. So that's as far as it goes, unless for some reason we have to release a report. We would redact every piece of confidential information. And our office would make that decision with the Ombudsman's Office. [LB265]

SENATOR PANSING BROOKS: Okay. Thank you. [LB265]

JULIE ROGERS: Yes. [LB265]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB265]

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JULIE ROGERS: Thank you. [LB265]

SENATOR SEILER: Next proponent. [LB265]

KIM HAWEKOTTE: (Exhibit 4) Good afternoon, Senator Seiler, members of the Judiciary Committee. My name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I'm the executive director at the Foster Care Review Office. We're here today to speak as a proponent for LB265. And we thank Senator Campbell for offering it. In my written testimony, I have kind of detailed out what it is the Foster Care Review Office does and how we do our case file review process. I mainly want to point out there are five things in this bill that, from our office standpoint, are extremely relevant. Point one deals with open meetings law. We received a decision from the Attorney General's Office about a year and a half ago that said for our 48 local boards across the state, whenever they meet they are subject to open meetings law because there was not an exception under open meetings statutes for that. Our concern with regards to that point is that while we agree with the spirit of open meeting law--that it's for transparency in government and for policy--our local board meetings really deal with that individual case file level and we are inviting parents and foster parents and children to come tell their story, that really that's designed more to be an executive session. So the process we currently use is we go into executive session at each 48 local board meeting, and we're just asking for an exemption that open meetings doesn't apply to those. Second issue deals, again, with the legal issue that currently under statute it says that our Foster Care Review Office reports are to be received by the court into evidence. But basically what some of the judges have interpreted it to mean is that it can only come in if one of the parties sitting there actually offers it into evidence. And if nobody offers it, it doesn't come in. From a fiscal and really a practical position, I can't have attorneys across the state for each and every juvenile court hearing. What this does is clear it up under statute that says they come into the court record automatically as an exhibit. Just like HHS reports do, guardian ad litem reports, and your court-appointed special advocate reports, your CASA reports, our reports would be considered the same way. To answer the one question, yes, those reports would come in and go into what we commonly refer to as the social file, the exhibit file which is not available to the public. So they would be. Third, Senator Campbell already talked about what our ability to look at the trial home visit and do reviews there instead of just strictly for children in out-of-home care. We feel that's a very relevant time period and a critical time period. We know as a state we have between a 30 percent and 35 percent reentry rate into out-of-home care. We need to figure out as a state what's causing that to happen. Fourth issue deals with what has already been discussed with regards to Probation. When the move went over to Probation under LB464 and LB561, when they were with OJS we could do case file reviews for any delinquent or status youth in OJS. But once they moved to Probation, we were not allowed to mainly because of conflicting statutes, not because of anybody's willingness to do it. What this clarifies is that we would be able to do case file reviews on any Probation youth in out-of-home care. Would you like me to continue? [LB265]

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SENATOR PANSING BROOKS: Please, I would like her to. [LB265]

KIM HAWEKOTTE: Okay, Senator. [LB265]

SENATOR SEILER: Please. [LB265]

KIM HAWEKOTTE: ...for any Probation youth in out-of-home care as long as we receive a court order. What we have worked out is just like the Inspector General talked about with Probation, is that those probation officers would go into their respective judges across the state to get us court orders in order to do the case file reviews and to get at the documentation and information available for any Probation youth in out-of-home care. The one thing that we feel is very important with regards to Probation is they would have to start reporting to us tracking information so that we would know on a daily basis how many Probation youth are placed out of home, where they're placed, and how long they've been placed out of home, just like we currently can with state wards. Point five is something Senator Campbell talked about, and that's really talking about that external data warehouse, what...there's been discussions about many groups across the state, that we have these wonderful data systems, whether it's N-FOCUS or the Department of Education, or you heard yesterday about NCJIS or the Crime Commission or our database. But none of those databases talk together. None of those databases share information. What the whole purpose of this advisory group is to say, how can we get all these databases to share information together so that we are looking at the youth in totality? So when I look at youth in out-of-home care, I'm also looking at, are they going to school, are they enrolled in school, how are they doing in school, have they had law enforcement violations, so that we can start with a pilot project within the Foster Care Review Office. Because that would be a set population of youth in out-of-home care, what would that warehouse need to look at? This advisory group would help all of us determine what are they key indicators? What would we all need to look at? What information could we currently share under statute? What can't we share under statute? Where do we need some statutory changes to allow this to happen? But really my hope is that this advisory group would be able to come back to you guys with a report by December that would say, look, if as a state system we wanted to go to a data warehouse for all children, what that would need to look like, who could supply what information from their respective systems into it, and what it would cost for us to be able to do that as a state. My goal for the Foster Care Review Office, because I have been fiscally responsible and have saved up money for the last couple of years to build our own database because I have a 30-year-old database that is not very user friendly to do analytics on, but is to be able then for us to do predictive analytics so we can start telling you such things as are children safe? Does poverty enter the picture? What are the child characteristics, what about parent characteristics, what about their demographics? How do we know services are the most effective? What we heard yesterday in a hearing was that as a state we spend about \$120 million on child welfare youth. Do we even know those services are effective? We need to get to an outcome-based system so

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that we can tell you what services are most effective and where we need to spend our money. So I would be happy to answer any questions. And I do appreciate you letting me go beyond my time. [LB265]

SENATOR SEILER: Go ahead. [LB265]

SENATOR PANSING BROOKS: Okay. Thank you for coming, Ms.... [LB265]

KIM HAWEKOTTE: Hawekotte. [LB265]

SENATOR PANSING BROOKS: Hawekotte, I'm sorry. [LB265]

KIM HAWEKOTTE: Closest, think of avocado. [LB265]

SENATOR PANSING BROOKS: Hawekotte, that's great. [LB265]

KIM HAWEKOTTE: Or manicotti. [LB265]

SENATOR PANSING BROOKS: Okay. Perfect. Thank you. Thank you for your testimony. Again, I'm sorry if it seems that I'm beating a dead horse, but we heard really disturbing testimony about what's happening with people's information. Even though a court will seal the record on a child, once they become 18, HHS does not automatically do that. And so adults are being hindered as they apply for jobs. And I know you're saying your information will not be public but...and we all believe that creating a technology system where everybody can speak to one another is really important and helpful, but again, it also allows for greater risk for those that later are out of the system and don't need all the kinds of information about their foster upbringing brought to light as they apply for a job or other kinds of things. So I hope you will be highly aware of this and help make sure in all of this that that does not happen, that names are redacted, that...I don't know how you're going to do it if everybody is communicating and needing all this information. But something needs to be done to protect these kids as they become adults. [LB265]

KIM HAWEKOTTE: And I don't disagree at all, Senator. And the central registry is not really part of all of this data warehouse but... [LB265]

SENATOR PANSING BROOKS: But could it be part of it at some point, I mean? [LB265]

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KIM HAWEKOTTE: It easily could be at some point. [LB265]

SENATOR PANSING BROOKS: That's my worry. [LB265]

KIM HAWEKOTTE: But a lot of the way...there are other states that have set up data warehouses. Some do it as an independent agency. Some do it in collaboration with university systems. But the way it goes in is that that data goes in and it is masked data so that is a number, not a name, so you are comparing number to number so you are never reporting out on Johnny (phonetic) as an individual as to what it looks like. [LB265]

SENATOR PANSING BROOKS: Well, that sounds a lot better. [LB265]

KIM HAWEKOTTE: Right. So there are "protectionisms" that you can build into that data warehouse to protect the type situation. And to me, that's the key. I'm an attorney. I don't pretend to know how you set up computer systems. But that's why this advisory group to me is key, to say how do we do that to ensure that none of that situation will arise in the future. [LB265]

SENATOR PANSING BROOKS: Wonderful. Thank you. [LB265]

SENATOR SEILER: Senator. [LB265]

SENATOR COASH: Well, I was just going to ask you a question to maybe help my colleague here. If I read in the paper that there was something happened with a kid in foster care and I call your office and I say I'd like to see the reports on Johnny (phonetic) Smith (phonetic) who I just read about in the paper, are you going to give those to me? [LB265]

KIM HAWEKOTTE: Never. [LB265]

SENATOR COASH: Okay. [LB265]

KIM HAWEKOTTE: And we do get those calls quite a bit asking for copies of our reports because a lot of people out there do know, as the Foster Care Review Office, we have full access to N-FOCUS and all the information there through our agreement with HHS. We don't give any of that information. We would refer them back to Health and Human Services because that's the state ward and that's who responsible, Senator. So we would never give that information out. [LB265]

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SENATOR COASH: Thank you. [LB265]

SENATOR PANSING BROOKS: Thank you. [LB265]

SENATOR SEILER: I have a little question about your point 2, for your reports should to be received into evidence without impediment. That's not true of DHHS or GALs or CASA. They have a representative there that can be cross-examined. People have a tendency to get diarrhea of the pen. And a lot of little untruths float through those things that can't withstand cross-examination. And so I'd really be...question whether or not you could have that report go in without a person there to be able to testify, yes, this true; no, that's not true. [LB265]

KIM HAWEKOTTE: One thing I would say, Senator, with regards to our reports that go before the court, as an attorney, they probably would make you...and I cringe because they are full of hearsay because any information that we are getting through an oversight, we are getting from third parties. [LB265]

SENATOR SEILER: Hearsay doesn't bother me. It's the truth that bothers me. [LB265]

KIM HAWEKOTTE: Right. So we are getting it from other parties. I think the way that I'm not as concerned about Foster Care Review Office reports from the standpoint as an attorney being in juvenile court, I could give it the weight I wanted to give it or not the weight I wanted to give. It is strictly an advisory opinion--nothing more, nothing less. It is not really being offered--this is going to sound too legal... [LB265]

SENATOR SEILER: I know. [LB265]

KIM HAWEKOTTE: ...for the truth of the matter asserted... [LB265]

SENATOR SEILER: For the truth of the matter, but just for... [LB265]

KIM HAWEKOTTE: ...but it is being offered as just an advisory as to what our recommendations are, just like the HHS report is. [LB265]

SENATOR SEILER: Well, I've been successful in keeping those kind of reports out unless you had somebody there to testify. [LB265]

KIM HAWEKOTTE: Right. [LB265]

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SENATOR SEILER: So I probably will oppose anything that does that. But I want you to know why I am opposing that. [LB265]

KIM HAWEKOTTE: And I understand. We're just trying to make sure... [LB265]

SENATOR SEILER: And it's just not your profession. I remember going through the bank problems back in the '80s when we had to clean up the files because bank officers have a tendency to write--and too bad Williams is gone (laughter)--write too much of what they think or feel rather than what actually happened. But thank you very much. Any other questions? [LB265]

KIM HAWEKOTTE: Thank you. [LB265]

SENATOR SEILER: Any further proponents? [LB265]

JULIET SUMMERS: (Exhibit 5) Good afternoon, Chairman Seiler and members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska supporting LB265 and AM545. You have my written testimony in front of you. And there is nothing in it that you haven't already heard from the proponents who came before me. They're the experts in their offices. And Senator Campbell's introduction laid it all out there. I'm just coming on the record because I drove down to Lincoln to talk to you today, so we... [LB265]

SENATOR SEILER: Yeah, and you want to go home early. [LB265]

JULIET SUMMERS: (Laugh) We support both principles of external oversight and data collection. Thank you for your time. [LB265]

SENATOR SEILER: Any questions of this...? We'll make sure your (inaudible) is part of the record. [LB265]

JULIET SUMMERS: Thank you, Chairman. [LB265]

SENATOR SEILER: You bet. Any further proponents? Seeing none, any opponents? Seeing nobody scrambling, any in the neutral, in the neutral? Senator Campbell, you may close. [LB265]

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SENATOR CAMPBELL: I have just a few items. I thank you for your attention and your questions. Three things that I want to say, and then we'll close for the day. I was given a note by the legal counsel to the HHS Committee in response, Senator Seiler, to your question about HIPAA. And it is our understanding that HIPAA is a requirement for healthcare providers and insurance companies. And therefore, the Office of the Inspector General is not a, quote, covered entity under HIPAA. [LB265]

SENATOR SEILER: Really? Wow. [LB265]

SENATOR CAMPBELL: But we can surely get you that reference. The second thing is that I'm going to provide...Senator Seiler has already seen it, but if you are interested, I would highly encourage you to sit down and read the Foster Care Review annual report, what they call the bumblebee report. And Senator Seiler is nodding. It is probably one of the most comprehensive annual reports I have seen on what the status of children is in out-of-home care in the state. The Foster Care Review Office and the Inspector General are required by statute to give an annual report to the Health and Human Services Committee and we have a hearing every year. And we will make sure that you get a copy because if you have any questions about how the Foster Care Review Office operates or where children are, once you read that report you'll be very clear. The other thing, third point and final, is I'm very proud of the fact that when we put together the Office of Inspector General, we have the only Inspector General for any inspector general across the United States, not just in child welfare, that is a part of the Legislature, not the executive branch. And that was very purposeful to ensure that we had good oversight over the department because too many times the Inspector General is inside the Department of Health and Human Services, or whatever they call it, and we did not want that. We wanted that person to be of an independent sort. And her job is to look at the trends in child welfare and bring to the attention of the Health and Human Services Committee that legislation or changes that need to be made. And our committee is very proud of the work that Ms. Rogers has done in setting up that office. And I thank you for the lateness of the day and a long wait... [LB265]

SENATOR SEILER: Late? Not for this committee. This is early. (Laughter) [LB265]

SENATOR MORFELD: This is nothing. [LB265]

SENATOR SEILER: Yeah. This is a walk in the park. [LB265]

SENATOR CAMPBELL: We had two long ones this week, so I can appreciate that. But thank you, Chairman Seiler. [LB265]

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SENATOR SEILER: You bet. That concludes the hearings today. (Exhibit 1) We will make those written records part of the transcript. [LB265]